TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 19[illegible].

No. [illegible] 140

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY, AND SINCLAIR PIPE LINE COMPANY, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE [illegible] CIRCUIT COURT OF APPEALS FOR THE [illegible] CIRCUIT

PETITION FOR CERTIORARI FILED [illegible]

CERTIORARI GRANTED [illegible]

(28,324)

(32.286)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 719

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY, AND SINCLAIR PIPE LINE COMPANY, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1926, of said Court, before the Honorable William S. Kenyon and the Honorable Arba S. Van Valkenburg, Circuit Judges, and the Honorable W. A. Cant, District Judge.

Attest:

(Seal) E. E. KOCH.
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the twenty-eighth day of September, A. D. 1925, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the District of Wyoming, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the United States of America was Appellant and the Mammoth Oil Company, et al., were Appellees, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

Stipulation as to Printing of Record.

United States Circuit Court of Appeals Eighth Circuit.

United States, Appellant,
No. 7188 vs.
Mammoth Oil Company, et al.

It is hereby stipulated by counsel for all parties in the above appeal that the opinions of the Court below on the motions for continuance shall be printed in the record immediately following each of said motions, instead of printing the same in another part of the record where they now appear.

ATLEE POMERENE
OWEN J. ROBERTS
Counsel for Appellant.

J. W. LACEY
MARTIN W. LITTLETON
H. V. LACEY
GEO. P. HOOVER
R. W. RAGLAND
G. T. STANFORD
Counsel for Mammoth Oil Company, Appellee.

EDW H. CHANDLER
R. W. GARRETT
Counsel for Sinclair Crude Oil Purchasing Co., and Sinclair Pipe Line Co., Appellees.

November 3, 1925

Endorsed: Stipulation as to Printing of Record. Filed in U. S. Circuit Court of Appeals on November 11, 1925, E. E. Koch, Clerk.

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1 Pleas in the District Court of the United States for the District of Wyoming, Sitting at Cheyenne.

Be It Remembered, that heretofore and on, towit, the 13th day of March, A. D. 1924, came United States of America by Atlee Pomerene, Esquire, Owen J. Roberts, Esquire and Albert D. Walton, Esquire, its attorneys, and filed in said Court a Bill of Complaint against Mammoth Oil Company, a corporation of the State of Delaware, Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware and Sinclair Pipe Line Company, a corporation of the State of Maine.

The said Bill of Complaint is in words and figures as follows, towit:

2 Bill Of Complaint.

Filed Mar. 13, 1924. Charles J. Ohnhaus, Clerk.

In the District Court of the United States for the District of Wyoming

United States of America, Plaintiff,

v.

Mammoth Oil Company, a Corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a Corporation of the State of Delaware; and Sinclair Pipe Line Company, a Corporation of the State of Maine, Defendants.

ALBERT D. WALTON
ATLEE POMERENE
OWEN J. ROBERTS
Solicitors for Plaintiff, the United States of America

3 To the Honorable the Judge of the said Court:

The United States of America, appearing herein by its attorneys, Atlee Pomerene and Owen J. Roberts, special counsel duly appointed and empowered thereunto by the President of the United States, by and with the advice and consent of the Senate of the United States, under a joint resolution of the Congress, brings this its bill of complaint against the defendants, and thereupon complains and says:

1. Defendant, Mammoth Oil Company, is, and at all times
4 herein mentioned was, a corporation organized and existing under the laws of the State of Delaware, and is a citizen and resident of the said State, and has its

principal office and place of business in Wilmington in said State, and is doing business within the State of Wyoming.

2. Defendant, Sinclair Crude Oil Purchasing Company, is, and at all times hereinafter mentioned was, a corporation organized and existing under the laws of the state of Delaware, and is a citizen and resident of the said state, and has its principal office and place of business in Wilmington in said state, and is doing business within the state of Wyoming.

3. Defendant, Sinclair Pipe Line Company is, and at all times herein mentioned was, a corporation organized and existing under the laws of the state of Maine, and is a citizen and resident of said state, and has its principal office and place of business in Portland, in said state, and is doing business within the state of Wyoming.

4. At the time of the events herein set forth, and long prior thereto, complainant was and still is the owner in fee simple of the following described lands:

Sixth principal meridian:

T. 38 N., R. 78 W.—

Sec. 2, SW.¼ of NE.¼, W.½ W½ of SE.¼.

Sec. 3, all.

Sec. 4, NE.¼, NE.¼ of NW.¼, N.½ of SE.¼, SE.¼ of SE.¼.

Sec. 9, E.½ of NE.¼, NE¼ of SE¼.

Sec. 10, all.

Sec. 11, W.½ of NE.¼, W.½ and SE.¼.

Sec. 14, all.

5 Sixth principal meridian—Continued.

T. 38 N., R. 78 W.—Continued.

Sec. 15, N.½, N.½ of SW.¼, SE.¼ of SW.¼, SE.¼.

Sec. 22, NE.¼, NE.¼ of NW.¼, E.½ of SE.¼.

Sec. 23, all.

Sec. 26, NW.¼ of NE.¼, N.½ of NW.¼.

T. 39 N., R. 78 W.—

Sec. 20, E.½ of NE.¼, SE.¼.

Sec. 21, all.

Sec. 22, SW. 1/4 of NW. 1/4, SW. 1/4.

Sec. 27, W. 1/2 of NE. 1/4, W. 1/2 and SE 1/4.

Sec. 28, all.

Sec. 29, E. 1/2, E. 1/2 of NW 1/4, N. 1/2 of SW. 1/4, SE. 1/4 of SW. 1/4.

Sec. 32, N. 1/2 of NE. 1/4, SE. 1/4 of NE. 1/4.

Sec. 33, N. 1/2, N. 1/2 of SW. 1/4, SE. 1/4 of SW. 1/4, SE. 1/4.

Sec. 34, all.

Sec. 35, SW. 1/4 of NW. 1/4, W. 1/2 of SW. 1/4, SE. 1/4 of SW. 1/4.

all in the county of Natrona, State of Wyoming. Said land was part of the unappropriated public domain of the United States of America.

5. The land described in paragraph 4 contained and contains large quantities of petroleum and was at and long prior to the happening of the events herein complained of, duly and lawfully set apart and dedicated as a naval oil reserve of the United States by proclamation and order of the President of the United States and by the action of the Congress thereof, by said action all entry rights theretofore existing and not previously exercised with regard to said land were terminated and repealed.

6 6. From March 5, 1921, until March 4, 1923, Albert B. Fall was the duly appointed, qualified and acting Secretary of the Interior of and for the United States of America. During the same period Edwin Denby was the duly appointed, qualified and acting Secretary of the Navy of and for the United States of America.

7. By Act of Congress of the United States approved June 4, 1920, it is provided:

"That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled 'An Act to provide for the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain,' or

pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States. And provided further, That the rights of any claimant uder said act of February 25, 1920, are not affected adversely thereby: And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922: Provided further, That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct."

Said act is unrepealed and unmodified by any subsequent legislation, and has at all times since its enactment been in full force and effect.

8. The lands described in paragraph 4 hereof are included among others in the lands described in said act of Congress.

9. On to wit, May 31, 1921, the President of the United States did make, sign, and promulgate a certain order known as an Executive Order, a true copy of which is annexed to this bill and made a part hereof, marked "Exhibit A."

10. Said order was invalid, illegal, and of no force or virtue in law and was known so to be by said Albert B. Fall, and by defendant Mammoth Oil Company, at the time of its procurement as hereinafter described.

11. Said order was obtained from the said President of the United States by representations, persuasions, and activities of the said Albert B. Fall, then Secretary of the Interior as aforesaid, and the said President in making said order acted upon said representations. The said representations were false in that said Albert B. Fall represented to the said President that said order was a proper order, and that its execution and promulgation was desired for the public benefit and for the advantage of the United States; while in truth and in fact the said Albert B. Fall desired that the said order should be made in order that he, the said Albert B. Fall, as Secretary of the Interior, might deal

with the said lands not in the interest of the United States, but to the advantage, profit, and benefit of defendant Mammoth Oil Company and of those connected with said defendant, and in particular of one Harry F. Sinclair, the promotor, organizer, and officer, and a large stockholder of said defendant. The said representations so made were in the interest of and for the purpose ultimately of benefiting the said defendant, and not in the interest of and for the benefit of the United States of America.

12. All of said representations made by said Albert B. Fall were false and untrue and were at the time known to said Albert B. Fall to be false and untrue and were made by him for the unlawful purpose of enabling him, as the Secretary of the Interior, to effect a pretended and unlawful transfer of rights in said lands from the Government of the United States to the defendant Mammoth Oil Company.

13. On to-wit April 7, 1922, said Albert B. Fall, as such Secretary of the Interior, purporting to act on behalf of the United States, and in pursuance of and reliance upon the said Executive Order above recited, did, together with Edwin Denby, Secretary of the Navy, execute and deliver un-
9 to the defendant Mammoth Oil Company, and the officers of said defendant did execute and deliver to said Albert B. Fall and said Edwin Denby, in their official capacities respectively, a certain agreement or indenture of lease for the lands described in paragraph 4 hereof, a true copy of which is annexed to this bill and made a part hereof and marked "Exhibit B."

14. Said agreement or indenture of lease is null and void in that its pretended execution was effected without authority in law.

15. There is annexed to this bill and made a part hereof, marked "Exhibit C," a true copy a certain contract made and executed February 9, 1923. Said agreement in this paragraph mentioned was made, executed and delivered as supplemental to and pursuant to the said agreement of April 7, 1922; and was for the construction of Government Storage Tankage, and facilities designated, for convenience, in said supplemental agreement, as "Projects A, B, C, and D." Said contract was made without advertisement or competitive bidding and was therefore and for other reasons herein stated fraudulent, illegal, null and void.

16. Under said contract of April 7, 1922, the defendant Mammoth Oil Company entered into possession of the lands

described therein, explored and drilled for petroleum or crude oil, and began the receipt of oil from the wells so drilled, and has thence hitherto taken oil from said lands pursuant to said agreement, and unless restrained therefrom will continue so to drill and take oil to the depletion of said property and to the great and continuing loss and damage of plaintiff, and has trespassed and will continue to trespass thereon unless restrained from so doing. That the said defendant has issued certificates as in said agreement provided and delivered the same to the Secretary of the Interior of the United States or his subordinates, and said certificates have been used in payment for construction work done by said defendant at one or more points in the United States pursuant to the terms of said agreement and said supplemental agreement.

17. Pursuant to the terms of said alleged suppemental contract of February 9, 1923, Exhibit C hereof, but without any warrant or authority of law, the defendant Mammoth Oil Company has proceeded with the construction of oil storage facilities for the navy of the United States, and said defendant has been paid in oil certificates as specified in said agreement of April 7, 1922, Exhibit B hereof.

18. The said Albert B. Fall and the said Harry F. Sinclair, acting for and on behalf of defendant Mammoth Oil Company, at or about the commencement of the year 1922, did combine, conspire and confederate to defraud the United States of America by the execution of a lease of the lands specified in paragraph 4 unto the said Harry F. Sinclair or a company or corporation to be named by him, and pursuant to said conspiracy the said Albert B. Fall and the said Harry F. Sinclair did do and perform sundry acts and things hereinafter enumerated, in the consummation of said conspiracy and for the purpose aforesaid, with the result that the agreement and lease aforesaid was executed and delivered.

19. The negotiations preliminary to said agreement were conducted on behalf of the United States of America by said Albert B. Fall, who purported to act in that behalf under the provisions of the Executive Order mentioned in paragraph 9 hereof.

20. The negotiation and conclusion of said agreement was a private and secret negotiation and agreement between the said Albert B. Fall and Harry F. Sinclair, president of de-

fendant Mammoth Oil Company, acting for it and on its behalf.

21. In contravention of the statutes of the United States in such case made and proivded, said contract of April 7, 1922, Exhibit B hereof, was awarded without advertisement and without competitive bidding, and in like contravention the construction work done under the said contract and said supplemental agreement of February 9, 1923, Exhibit C. hereof, was done without advertisement and without competitive bidding; and the oil belonging to the United States, was by the terms of said alleged agreement, Exhibit B hereof, sold and delivered to the said defendant Mammoth Oil Company without advertisement and without competitive bidding. Said contracts were and are illegal, null and void, and without the power of the officers of the United States who executed the same to make the same; and wholly without authority in law.

12 22. Edwin Denby, Secretary of the Navy of the United States, took no part in the negotiation of said contract of April 7, 1922, Exhibit B hereof, exercised no discretion with regard thereto or to the terms thereof, and affixed his signature thereto merely in a colorable attempt to evidence the compliance by him in its terms and an exercise of discretion in connections with its making; and the same is true concerning the contract of February 9, 1923, Exhibit C hereof.

23. Other persons and corporations of standing and responsibility, to-wit, The Texas Company, The Pioneer Oil Company, Edward L. Doheny, Leo A. Stack, and others, were desirous of obtaining a lease upon the lands described in paragraph 4 and were by the said Albert B. Fall, denied an opportunity so to do and discouraged from bidding or becoming competitors with said defendant Mammoth Oil Company for obtaining such a lease or agreement; and, as plaintiff is informed, believes, and therefore avers, defendant Mammoth Oil Company well knew that said Albert B. Fall was withholding from others the opportunity to bid or to become competitors for lease of said lands above described, and said Harry F. Sinclair was conspiring said Fall to that end.

24. The said Albert B. Fall, acting as aforesaid, although a question was raised as to the legality of such a lease, steadfastly refused to take the opinion of the Solicitor of the Department of the Interior of the United States or of the Attorney General of the United States concerning the legality of the same.

13 25. The said Albert B. Fall secretly communicated to the said Harry F. Sinclair, acting for the defendant Mammoth Oil Company, that he would not make any lease upon the lands described in said agreement unless and until the said Harry F. Sinclair produced to him a quitclaim deed for all mining claims asserted by any parties to any portion of the lands embraced within the said agreement. Said Albert B. Fall then well knew that said said claims were worthless and himself expressed that belief. By connivance between the said Albert B. Fall and the said Harry F. Sinclair it was arranged that the said Harry F. Sinclair should procure such a quitclaim, which was done by said Harry F. Sinclair, and the same lodged with said Albert B. Fall before said agreement of April 7, 1922, Exhibit B hereof, was executed. Said claims were known to be valueless, but were held by the Pioneer Oil Company, a competitor of the said Harry F. Sinclair, which competitor desired to become a bidder for said lease. Said Albert B. Fall, fraudulently and with intent to stifle competition, and with full knowledge that said Harry F. Sinclair, acting under his advice and instructions, had obtained such quitclaim deed, made the obtaining of the same a condition precedent to receiving any offer for a lease of said land from any other person or corporation, well knowing that the condition so imposed had been made impossible of performance. Said Albert B. Fall made the obtaining of such a quitclaim deed a condition precedent to the obtaining of a lease upon the said lands after it had been fraudulently and secretly arranged between him and the said Harry
14 F. Sinclair that the said Harry F. Sinclair should obtain a quitclaim deed for said mining claims, with the purpose and with the effect of preventing and disabling competitors of the said Harry F. Sinclair who desired to obtain a lease upon the said lands from bidding for such lease and obtaining the same.

26. Said Albert B. Fall agreed with one Shaffer that he would see that said Harry F. Sinclair, or the defendant Mammoth Oil Company, for whom said Harry F. Sinclair was acting in negotiating said lease, should set apart certain of said leased lands for the benefit of said Shaffer, and Albert B. Fall did arrange with said Harry F. Sinclair that as a condition of receiving said lease he, the said Harry F. Sinclair, or the said defendant for whom he was acting, should so set apart lands for the said Shaffer out of the leased lands, and said Harry F. Sinclair, in accordance with his agreement and understanding with the said Albert B. Fall, and the said

defendant, acting in accordance with said understanding, did set aside certain of said lands for the said Shaffer.

27. Said Albert B. Fall did fraudulently and covinously cause all information concerning the making of the said agreement, both before it was made and for a considerable time after it was made, to be kept secret and concealed from his associates, from the Congress of the United States, and from the public.

28. In negotiating and concluding said agreement said Albert B. Fall and said Harry F. Sinclair, acting for and on behalf of the defendant Mammoth Oil Company, did
15 fraudulently and covinously combine, confederate, and conspire in the manner and by the acts hereinabove set forth, and other matters and things, to defraud the United States of America.

(a) By granting said lease upon said naval petroleum lands in violation of law;

(b) To favor and prefer said defendant Mammoth Oil Company over and above other persons desirous of taking a lease upon said lands;

(c) To insure to said defendant Mammoth Oil Company the valuable right to receive and take to exhaustion all of the oil and gas which might be obtained from said lands in said agreement mentioned;

(d) To lease the said lands to said defendant Mammoth Oil Company by said agreement at an inadequate, improper, and fradulent consideration.

29. Said agreement of April 7, 1922, Exhibit B hereof, and said agreement of February 9, 1923, Exhibit C hereof, so executed and delivered, were and are fraudulent, illegal, null and void, and of no force or validity as against the United States of America, by reason of the matters and things hereinabove more fully set forth.

30. Said agreement of April 7, 1922, Exhibit B hereof, constitutes a lien, encumbrance, and cloud upon the title of plaintiff to said lands, which plaintiff is entitled to have removed.

31. Defendant Mammoth Oil Company should cease to trespass upon said lands, deliver up said agreement to be cancelled, should make discovery of all that it has received
16 thereunder, and should render to complainant a full, true, and accurate accounting of all the oil received by

it under the terms of said agreement and of all matters and things and all items of account showing its transactions under said agreement from the date of the making thereof.

32. Defendant Sinclair Crude Oil Purchasing Company, as plaintiff is informed, claims to have and to hold certain rights derived from defendant Mammoth Oil Company, and by its servants, agents, and employees has erected and maintained certain structures upon the lands described in paragraph 4 hereof. Plaintiff avers that said defendant Sinclair Crude Oil Purchasing Company, although alleging certain rights to be upon said land, derived from said defendant Mammoth Oil Company, is nevertheless a trespasser upon said lands.

33. Defendant Sinclair Pipe Line Company, as plaintiff is informed, claims to have and to hold certain rights derived from defendant Mammoth Oil Company, and by its servants, agents, and employees has erected and maintained certain structures upon the lands described in paragraph 4 hereof. Plaintiff avers that said defendant Sinclair Pipe Line Company, although alleging certain rights to be upon said land, derived from said defendant Mammoth Oil Company, is nevertheless a trespasser upon said lands.

34. Plaintiff is without an adequate remedy at law in that there is no remedy at law as complete, practicable, and efficient to the end of prompt administration of Justice
17 as the remedy in equity, and that the intervention of a court of equity will prevent a multiplicity of suits.

Plaintiff therefore prays:

(1) That your honorable Court will grant a writ of injunction, temporary until final hearing and perpetual thereafter, enjoining and restraining defendant Mammoth Oil Company, its officers, servants, agents and employees, from further drilling wells or operating under said lease of April 7, 1922, Exhibit B hereof, or performing further work of any sort thereunder or under any contract or order of any department of the United States pursuant thereto, or to the said agreement of February 9, 1923, Exhibit C hereof.

(2) That your honorable Court will appoint a receiver or receivers to take possession and control of said lands and all property of defendant Mammoth Oil Company thereon situate and of all oil and gas thereon produced, and in his or their discretion to sell and turn to account the same, or to hold and

store the same, and safely to hold the proceeds of any sales thereof pending the final termination of this cause, and until the further order of the Court in the premises.

(3) That your honorable Court grant a final injunction directed to the defendant Mammoth Oil Company, it officers, servants, agents, and employees, enjoining and commanding them and each of them to cease from further trespassing upon said lands, and to cease to harass and molest the plain-
18 tiff in the quiet and peaceable enjoyment thereof.

(4) That your honorable Court enter a decree declaring the said agreement of April 7, 1922, Exhibit B hereof, and February 9, 1923, Exhibit C hereof, to be null, void, and of none effect as against the United States of America.

(5) That your honorable Court enter a decree enjoining and commanding defendant, Mammoth Oil Company, its officers and directors, to surrender and deliver the said agreements to the proper officer of the United States of America to be cancelled.

(6) That your honorable Court will enter a decree that said defendant Mammoth Oil Company be required to make full, just, true, and complete account for all oil and other minerals produced and converted to its use, and for any waste committed by it under color or cover of said agreement, and that judgment may be rendered against said defendant for the amount shown to be due by such accounting.

(7) That your honorable Court commanded the defendant Sinclair Crude Oil Purchasing Company, and the defendant Sinclair Pipe Line Company, to make discovery in this action of their alleged rights to possession and occupancy of the said lands described in the bill of complaint, or any part thereof, adjudicate the rights of said defendants in the premises, and enter a decree against them in relief of the plain-
tiff's right of possession.

19 (8) Such other and further relief as to your honorable Court shall seem meet in the premises.

ATLEE POMERENE,
OWEN J. ROBERTS,
Solicitors for Complainant, the United States of America.

United States of America,
District of Columbia—ss.

Personally appeared before me, the undersigned, a notary public duly commissioned for the District of Columbia, Atlee Pomerene and Owen J. Roberts, special counsel for the United States, the plaintiff in the above cause, who, being duly sworn as to the truth of the allegations made in the above bill, say that they have read the foregoing bill and know its contents, and that so far as the matters therein stated are of their own knowledge, the same are true, and that as to all matters therein stated the same are true to the best of their knowledge, information and belief.

ATLEE POMERENE,
OWEN J. ROBERTS.

Sworn to and subscribed before me this 10th day of March, A. D. 1924.

META A. FAULCONER,
(Seal) Notary Public.

My commission expires Jan. 29, 1926.

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20 Exhibit A.

Executive Order.

"Under the provisions of the act of Congress approved February 25, 1920 (41 Stat. 437), authorizing the Secretary of the Interior to lease producing oil wells within any navy petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder or any part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat. 912), directing the Secretary of the Navy to conserve, develop, use, and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves, the administration, and conservation, of all oil and gas bearing lands in naval petroleum reserves Nos. 1 and 2, California, and naval petroleum reserve No. 3 in Wyoming and naval shale reserves in Colorado and Utah, are hereby committed to the Secretary of the Interior subject to the supervision of the President but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in cooperation with the Secretary or Acting Secretary of the Navy. The Secretary of the Interior is authorized and directed to perform any

and all acts necessary for the protection, conservation and administration of the said reserves subject to the conditions and limitations contained in this order and the existing laws or such laws as may hereafter be enacted by Congress pertaining thereto.

WARREN G. HARDING.

The White House, May 31, 1921.

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21 Exhibit B.

Whereas the Government of the United States is charged with the duty of securing and storing a supply of fuel oil for naval purposes, and is desirous of acquiring suitable storage for such fuel oil at points easily accessible to the United States Navy; and

Whereas the Government is desirous of avoiding in so far as possible any risks of loss of the supply of crude oil available for the United States Navy by a reduction of gas pressure resulting from the drilling and operating of wells located outside of Naval Reserve No. 3, Wyoming; and

Whereas the Government is desirous of creating a competitive market and securing the best prices obtainable for royalty oil received and to be received by the Government of the United States from the public domain in the Salt Creek field in Wyoming; and

Whereas the Government is desirous of exchanging crude oil that may be received by it as royalty from the said Naval Reserve No. 3, for fuel oil for the use of the United States Navy, and is desirous of securing adequate storage facilities for the storing of such fuel oil as is received by it in exchange for said crude oil over and above the requirements for use of the United States Navy:

Now, therefore, the Government of the United States, acting through the Secretary of the Interior, by and with the consent of the Secretary of the Navy, proposes to secure the objects hereinbefore set forth by entering into a contract of lease covering Naval Petroleum Reserve No. 3, prescribing the terms and conditions for the development and exploitation of the oil and gas within such naval reserve, and providing for the construction of a pipe line, among other things, to transport said oil from Naval Reserve No. 3 and for the transportation of royalty oil belonging to the Government

and produced in Salt Creek field, Wyoming, should such transportation become necessary.

This indenture of lease entered into in triplicate this 7th day of April, 1922, by and between the United States of America, acting in this behalf by the Secretary of the Interior of the United States, and the Secretary of the Navy of the United States, party of the first part, hereinafter called the lessor, and Mammoth Oil Co., a corporation of the State of Delaware, party of the second part, hereinafter called
22 the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved June 4, 1920, entitled "An act making appropriation for the naval service for the fiscal year ending June 30, 1921, and for other purposes," witnesseth:

Article I.

The lessor, in consideration of royalties to be paid and the covenants to be observed, as hereinafter specifically set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits in or under the tracts of land hereinafter in this section described for a period of 20 years and so long thereafter as oil or gas is produced in paying quantities from said lands, the same being lands described in Executive order of withdrawal issued by the President of the United States on April 30, 1915, creating naval petroleum reserve No. 3, Wyoming No. 1, involving 9,321 acres, more or less, described as follows, to wit:

Sixth principal meridian:

T. 38 N., R. 78W.

Sec. 2, SW. ¼ of NE. ¼, W. ½, W. ½ of SE. ¼.

Sec. 3, all.

Sec. 4, NE. ¼, NE. ¼ of NW. ¼, N. ½ of SE. ¼, SE. ¼ of SE. ¼.

Sec. 9, E. ½ of NE. ¼, NE. ¼ of SE. ¼.

Sec. 10, all.

Sec. 11, W. ½ of NE. ¼, W. ½ and SE. ¼.

Sec. 14, all.

Sec. 15, N. ½, N. ½ of SW. ¼, SE. ¼ of SW. ¼, SE. ¼.

Sec. 22, NE. ¼, NE. ¼ of NW. ¼, E. ½ of SE. ¼.

Sec. 23, all.

Sec. 26, NW. ¼ of NE. ¼, N. ½ of NW. ¼.

T. 39 N., R. 78 W.—

Sec. 20, E. ½ of NE. ¼, SE. ¼.

Sec. 21, all.

Sec. 22, SW. ¼ of NW. ¼, SW. ¼.

Sec. 27, W. ½ of NE. ¼, W. ½ and SE. ¼.

Sec. 28, all.

Sec. 29, E. ½, E. ½ of NW. ¼, N. ½ of SW. ¼, SE. ¼ of SW. ¼.

Sec. 32, N. ½ of NE. ¼, SE. ¼ of NE. ¼.

Sec. 33, N. ½, N. ½ of SW. ¼, SE. ¼ of SW. ¼, SE. ¼.

Sec. 34, all.

Sec. 35, SW. ¼ of NW. ¼, W. ½ of SW. ¼, SE. ¼ of SW. ¼.

23 all in the county of Natrona, State of Wyoming, together with the right to construct and maintain thereupon, over, upon, and across or under the surface of said lands, all works, buildings, plants, waterways, roads, telegraph and telephone lines, pipe lines, reservoirs, tanks, tank farms and pumping stations, or other structures necessary to the full enjoyment hereof, and also the right to construct and maintain upon, across, and under any other public lands under the laws and regulations pertaining to the construction and maintenance of pipe lines across the public domain, such pipe line or pipe lines as may be necessary for the carrying out of the purposes hereof, together with such buildings, pumping stations, tanks and other structures as may be necessary to the efficient and economical operation thereof.

Article II.

In consideration of the foregoing, the lessee agrees as follows, to-wit:

1. To furnish bond with approved surety in the penal sum of two hundred fifty thousand ($250,000) dollars, conditioned upon compliance with the terms of this lease.

2. To drill wells as follows:

(a) Within 180 days from the date of execution and delivery of this agreement, to proceed with reasonable diligence to begin operations for the drilling on said premises of not less than twenty test wells, hereinafter sometimes referred to as the first series of wells, and to continue such drilling with reasonable diligence as to each of said wells to production, or to a point where the well is, in the judgment of the lessee, demonstrated to be unsuccessful, but no such well shall be abandoned as unsuccessful unless and until the same shall have been drilled either to the second Wall Creek sand, or to a depth which is reasonably estimated to be sufficient to penetrate said sand. Said wells shall be drilled on locations within a radius of 250 feet from the following points, to-wit:

Township 39 N., range 78 west:

Sec. 20, 300' from center of section.

Sec 29, NE. ¼ of NW. ¼ along boundary line of reserve.

Sec. 21, center.

Sec. 21, NW. corner of section.

Sec. 22, SW. corner.

Sec. 28, center NW. ¼.

Sec. 32, NE. corner.

Sec. 28, center of SE. ¼.

Sec. 27, W. ½ of SE. ¼.

Sec. 33, center of SE. ¼.

Sec. 34, center.

24 Township 38 N, range 78 west:

Sec. 4, E. ½ of SE. ¼.

Sec. 3, center of section.

Sec. 2, center of NW. ¼.

Sec. 2, center of south line of SW. ¼.

Sec. 10, center of south line of NW. ¼.

Sec. 10, center SE. ¼.

Sec. 11, center south line NW. ¼.

Sec. 14, center south line NW. ¼.

Sec. 15, anywhere on section.

(b) Upon the completion of each well of said first series, lessee agrees to proceed with due diligence to take a daily gauge or test of each such well for a period of sixty days, for the purpose of ascertaining the average daily natural production of each of said wells for such sixty-day period. Upon the completion of such sixty days test period for all of said first series of wells, a concurrent daily gauge or test shall then be made, for a period of sixty days, of all the wells of said first series which are producing oil in commercial quantities. If for said last sixty days test period the total average daily natural production from all of the said wells so tested equals or exceeds twenty thousand (20,000) barrels, then and in that event lessee agrees that it, or its nominee will within sixty days thereafter commence operations for the construction of and continue with reasonable diligence to completion, a pipe line of not less than twenty five thousand (25,000) barrels daily capacity, extending from the lands described in Article I hereof to a point or connection on the main pipe line now operated by Sinclair Pipe Line Company or on the main pipe line now operated by Prairie Pipe Line Company and extending from the mid-continent field to Chicago, Illinois, said pipe line to be a common carrier.

Provided, That upon the expiration of the first test period of sixty days for at least the first eighteen of the wells of said first series, the concurrent test above referred to of all the wells of said series producing oil in commercial quantities, may then be taken, and the total average daily natural production of all such wells from said test divided by the number of test wells that have been drilled shall be deemed to be the average daily natural production per well of each well of said first series, if any, not then completed, and if the total average daily natural production of all of the wells so tested, plus the total average daily natural production (estimated as herein provided) of the wells of said first series, if any, not then completed, shall equal or exceed 20,000 barrels, then and in that event lessee or its nominee shall within sixty days thereafter commence operations for the construction of the pipe line hereinbefore referred to.

(c) If the average daily natural production from all of said producing wells of said first series does not upon said concurrent test for sixty days equal twenty thousand barrels, then and in that event lessee shall forthwith proceed

with reasonable diligence to drill a second series of wells, as follows: For each of such twenty wells of the first series the average daily natural production of which is at least one hundred barrels for the first sixty days' test period for such well hereinbefore provided for, lessee shall forthwith proceed with reasonable diligence to drill two (2) additional wells.

Upon the completion of each well of the second series, lessee shall proceed with due diligence to take a daily gauge or test thereof for a period of sixty days for the purpose of ascertaining the average daily natural production of each such well over such test period. Upon the completion of said sixty days' test period for all of the wells of said second series, a concurrent daily gauge or test shall then be made for a period of sixty days, of all wells of both the first series and of the second series which are producing oil in commercial quantities. If for said concurrent sixty days' test period the average daily natural production from all of such wells then drilled and so tested equals or exceeds twenty thousand (20,000) barrels, then and in that event lessee agrees that it or its nominee will within sixty days thereafter commence operations for the construction of and continue with reasonable diligence to completion a pipe line of at least twenty-five thousand barrels daily capacity between the points hereinbefore named in subsection (b) hereof.

Provided, That whenever at least 90 per cent of the wells of the second series have been completed and tested for sixty days the concurrent test of all the wells of both the first and second series producing oil in commercial quantities may then be made and the total average daily natural production of all the wells of the second series during such test period divided by the number of wells of the second series then drilled shall be deemed to be the average daily natural production per well of each of the wells of the second series, if any, not then completed; and if the total average daily natural production of all of the wells so tested, plus the total average daily natural production (estimated as herein provided) of the wells of said second series, if any, not then completed, shall equal or exceed 20,000 barrels, then and in that event lessee or its nominee shall within sixty days thereafter commence operations for the construction of the pipe line hereinbefore referred to.

(d) If the average daily natural production from all of such producing wells of the first and second series does not, upon said concurrent test for a sixty-day period, equal or

exceed twenty thousand barrels, then and in that event
26 lessee shall forthwith proceed with reasonable diligence to drill a third series of wells, as follows:

For each well of the second series the average daily natural production of which for the first sixty days test period for such well, as hereinbefore provided, is at least one hundred barrels, lessee shall forthwith proceed with reasonable diligence to drill two (2) additional wells.

Beginning sixty days after the completion of the last well of the third series above referred to (if lessee should be required to drill said third series hereunder), a concurrent daily gauge or test shall then be made for a period of sixty days of all wells of the first, the second, and the third series which are producing oil in paying quantities, and if the average daily natural production of all said wells for such test period of sixty days equals or exceeds twenty thousand (20,000) barrels, lessee or its nominee shall within sixty (60) days thereafter commence operations for the construction of and, continue with reasonable diligence to completion, the pipe line as hereinbefore in subsection (b) of this article described.

Provided, however, That if at any time lessee shall begin operations for the construction of a pipe line, as hereinbefore described, whether the obligation so to do shall have arisen under the terms hereof or not, and continue with reasonable diligence to completion of the same, then and in that event upon the beginning of operations for the construction of such pipe line the obligation to drill further test wells of either the second or third series shall cease and determine.

Provided, however, That if, at any time after the completion of all the test wells of the first series and of the second series and at least fifty per cent (50%) of the test wells of the third series hereinbefore mentioned, the lessor shall so request, the lessee shall make a concurrent test for sixty (60) days of all the wells producing oil in paying quantities at such time, and if the production of all of such wells reaches an average daily natural production of twenty thousand (20,000) barrels for such period of sixty (60) days, lessee agrees that it or its nominee will within sixty (60) days thereafter begin operation for the construction of and continue with reasonable diligence to completion said pipe line hereinbefore referred to.

(e) Definition of "natural production": For the purpose of this contract the term "natural production" shall mean

the production by natural flow or the pumping of crude petroleum from a well that has not been artificially stimulated by the use of dynamite, nitroglycerin, or other explosives, or by any other method employed for increasing or stimulating the production of such well.

(f) No test well which the lessee is required to drill upon the lands hereby leased, as hereinbefore set forth, shall
27 be abandoned by the lessee as unsuccessful, unless and until the same shall have been drilled to the second Wall Creek sand, or to a depth which it is reasonably estimated to be sufficient to penetrate said sand; and at least one of the test wells required to be drilled by the lessee under the terms of this agreement shall be drilled to a depth estimated to penetrate the Lakota sand: Provided, however, That the lessee shall not be required to drill such well to a depth in excess of 4,300 feet.

(g) Upon the completion of the test wells hereinbefore provided for the lessee shall continue in good faith to use due diligence to fully develop the lands hereby leased for the production of oil and gas.

(h) The lessee agrees to drill all necessary wells to offset the wells of others on adjoining lands. The lessee further agrees to maintain all wells in a state of production until each well no longer produces oil or gas in paying quantities when operated with diligence and in accordance with good practice.

3. Royalties.—The lessee agrees to pay and deliver to the lessor as royalties under this lease a royalty on all gas and casing-head gasoline produced and sold from said lease, or used other than for production purposes on the lease, and on all oil produced, except that used for production purposes or unavoidably lost, as follows:

(a) On gas and casing-head gasoline: On gas produced and sold, whether same shall be gas from which the casing-head gasoline has been extracted or otherwise, 12½ per cent of value thereof in the field where produced, where the average amount produced and sold per day for the calendar month from the land leased is less than 3,000,000 cubic feet, and 16-2/3 per cent where the average daily amount produced and sold is 3,000,000 cubic feet or over.

On casing-head gasoline 16-2/3 per cent of the value of the casing-head gasoline extracted from the gas produced and sold, computed on the basis provided for in the present ex-

isting operating regulations of the Department of the Interior promulgated pursuant to the provisions of the act of February 25, 1920 (hereinafter in Article III hereof referred to), known as the leasing act, but only in so far as applicable.

The value in the field where produced of gas and casing-head gasoline for royalty purposes, unless such gas or casing-head gasoline is disposed of under an approved sales contract as provided in section 5 of this article or other method, shall be as fixed by the Secretary of the Interior.

28 In cases where the gas produced and sold has a value both for casing-head gasoline content and as dry gas from which the casing-head gas has been extracted, then the royalties above provided shall be paid on both of such values.

(b) The royalties on oil payable hereunder shall be based upon the amount of oil produced from said lease, less deductions for sediment, impurities, etc., to the extent and in the manner prevailing in the Salt Creek oil field, Wyoming, at the time said oil is produced (except oil used for production purposes thereon or unavoidably lost), the schedule of royalties to be as follows:

(1) For oil produced of 34 degrees Baumé or over:

	Per cent.
On that portion of the average production per well not exceeding 50 barrels per day for the calendar month	12½
On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month	16 2/3
On that portion of the average production per well of more than 100 barrels and not more than 200 barrels per day for the calendar month	20
On that portion of the average production per well of more than 200 barrels and not more than 300 barrels per day for the calendar month	25
On that portion of the average production per well of more than 300 barrels and not more than 400 barrels per day for the calendar month	30
On that portion of the average production per well of more than 400 barrels and not more than 500 barrels per day for the calendar month	35

On that portion of the average production per well of more than 500 barrels and not more than 600 barrels per day for the calendar month 40

On that portion of the average production per well of more than 600 barrels and not more than 800 barrels per day for the calendar month 42½

On that portion of the average production per well of more than 800 barrels and not more than 1,000 barrels per day for the calendar month 45

On that portion of the average production per well of more than 1,000 barrels per day for the calendar month 50

29 (2) For all oil produced of less than 34 degrees Baume:

Per cent.

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month 12½

On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month 14 2/7

On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month 16 2/3

On that portion of the average production per well of more than 100 barrels and not more than 200 barrels per day for the calendar month 20

On that portion of the average production per well of more than 200 barrels per day for the calendar month 25

The unit of quantity for the fuel oil and royalty oil hereinunder shall be the barrel of 42 United States gallons of 231 cubic inches at a standard temperature of 60 degrees Fahrenheit. Any temperature corrections shall be made for the fuel oil at the time of delivery by the divisional method at the rate of .0004 for every one degree Fahrenheit if the temperature of the oil is above or below 60 degrees Fehrenheit.

Only wells which have a commercial production during at least a part of the month shall be considered in ascertaining the average production as above provided for the purpose of

computing the royalty. The method of determining number of wells having a commercial production on the lease shall be as follows:

Case 1: Where no new wells have been brought in during the calendar month, count as producing wells each well which had produced 15 days or more during the month and disregard those which have produced less than 15 days during the month.

Case 2: When initial production of a lease is made during the calendar month, compute royalty on basis of well days producing.

Case 3: When a new well is brought in during the calendar month on a producing lease on or before the 20th of the month, each new well will be considered as a producing well for the entire month, but if such new well comes in after the 20th of the month it shall not be considered as a producing well.

Case 4: "Head wells" that make their best economical production by intermittent pumping will be considered as steady producers if so operated throughout the month.

30 (c) The lessor agrees to, and does hereby, sell to the lessee, and the lessee agrees to, and does hereby, purchase from the lessor all the royalty oil hereinbefore mentioned, as and when the same is produced by the lessee, so that the lessee shall take and have title to and possession of, and the right to dispose of, all oil, as and when the same is produced. In payment for said royalty oil, and in lieu of the delivery in kind to the lessor, lessee agrees to set up an oil exchange credit to lessor therefor and to issue to the lessor, as evidence thereof, oil certificates showing the amount of said royalty oil taken by the lessee and the value thereof. The value of said royalty oil produced and run from the lands hereby granted shall be the same as the highest posted market price offered or paid either (1) in the Salt Creek oil field, Wyoming, for a majority of the oil purchased in said field, or (2) in the mid-continent oil field by the Sinclair Crude Oil Purchasing Company, or (3) in the mid-continent oil field by the Prairie Oil and Gas Company, whichever of such prices is the highest, for oil of the same gravity, at the time such royalty oil is produced and run from the lands hereby granted. Such certificates shall be issued on the 10th day of each month for the royalty oil produced during the preceding calendar month.

The oil certificates above referred to shall be noninterest bearing and shall be in form substantially as follows, to-wit:

No..... Date:.....

Oil Certificate.

This certificate evidences the delivery by United States Government of ..... barrels (42 U. S. gallons) of ..... gravity crude oil from Naval Reserve No. 3, Natrona County, Wyoming, to the undersigned, said oil being of a cash value of ..... ($.....).

This certificate will be redeemed upon presentation at the office of the maker, at ....., as follows:

(a) As a credit upon, or for the extinguishment of any obligation to the maker hereof from the United States Government by reason of the construction of steel tank storage for the use of the United States Navy in the storing of fuel oil under the agreement for the exchange of crude oil for fuel oil and storage under the contract between the United States of America, acting on this behalf by the Secretary of the Interior and the Secretary of the Navy, of the one part, and the Mammoth Oil Company of the other part, of date the ..... day of April, 1922; or

(b) The maker hereof will deliver for the use of the United States Navy fuel oil of the specifications and under the terms and upon the exchange basis fixed in the certain contract dated ..... day of March, 1922, between the United States Government and the maker hereof; or

31 (c) The maker hereof will deliver gasoline, kerosene, lubricating oils, and or other petroleum products for the requirements of the United States Navy, the basis of exchange therefor and the conditions of delivery to be as mutually agreed upon in a separate contract between the United States Government and the maker hereof; or

(d) Upon the conditions stated in the contract of the .... day of April, 1922, above referred to, this certificate may be redeemed in cash.

If redeemed in liquidation of such indebtedness of lessor to lessee for amounts advanced for construction of storage, or if redeemed in cash, such redemption shall be at the face value stated above of the crude oil delivery of which is evidenced hereby.

.....

By .....

Said oil certificates so issued by the lessee shall be redeemed by the lessee either in liquidation of amounts advanced or expended by lessee or its nominee for the construction of storage for lessor as hereinafter provided, or by deliveries of fuel oil of the specifications hereinafter set forth for the use of the United States Navy, or by deliveries of gasoline, kerosene, lubricating oils, and or other petroleum products for the requirements of the United States Navy, or subject to the conditions hereinafter set forth, a portion of them may be redeemed in cash, all according to the terms, in the manner, on the basis of exchange and upon the conditions as hereinafter set forth, as follows to-wit:

The lessee agrees, if and when requested so to do by the lessor, to construct or to pay the cost of construction of steel storage tankage up to but not in excess of such an amount as shall be estimated to be necessary or required for the storage by the lessor of the fuel oil to be received by it as hereinbefore provided in exchange for royalty crude oil from the lands hereby leased; said storage to be constructed as and when the same shall become necessary or shall be required for the storage of such fuel oil so delivered by the lessee or its nominee, and said storage to be located at points designated by the lessor; the cost of such tankage to be liquidated by lessor by delivering to the lessee or its nominee crude oil certificates hereinbefore referred to, said certificates so delivered to be of the face amount in value equal to the cost of such tankage for which the lessee or its nominee shall have paid or become liable.

The conditions upon which a portion of said certificates may be redeemed in cash are as follows: Lessor shall have the option, on or before July 1, 1923, to notify the lessee in writing if it elects to receive payment in cash for any
32 portion of said crude oil certificates to be issued for royalty oil which may be run during the calendar year 1924. If it does so elect to receive cash, and shall so notify lessee at the time above mentioned, it shall at said time also notify lessee the amount, if any, of fuel oil, gasoline, kerosene, lubricating oils, and or other petroleum products which it desires to receive for royalty crude oil run during said year, and that it elects to have the balance of said certificates (over and above those required for liquidation of steel tank storage) redeemed in cash. Lessor shall likewise have the option in each year thereafter during the continuance of this contract to similarly notify lessee on or before July 1st with reference to redemption of crude oil certificates to

be issued for royalty oil run during the next succeeding calendar year. If such notice is so given, lessee shall, during the succeeding calendar year, redeem said crude oil certificates in cash over and above (a) those required to liquidate expenditures made by lessee for construction of steel tank storage hereunder, and (b) those redeemed in fuel oil, gasoline, kerosene, lubricating oils, and or other petroleum products pursuant to said notice. If such notice is not given at the time hereinabove provided, lessee shall not be under obligation to redeem in cash any of such crude oil certificates issued for royalty oil run during the next succeeding calendar year.

On or before forty five (45) days from the date when any such oil certificates are issued to the lessor, lessor shall present the same to the lessee or its nominee for redemption, or shall notify lessee or its nominee in writing of the amount of such certificates so held by it for redemption. For any and all sums which shall have been theretofore advanced or paid by lessee for the account of lessor for the construction of storage, as hereinbefore provided, and not previously liquidated, lessor shall at said time deliver to lessee or its nominee oil certificates of a total face amount up to the amount of such sums so advanced or paid by lessee. As to any and all additional certificates so presented for redemption or held by lessor for redemption over and above those required to liquidate such indebtedness for sums advanced or paid by lessee or its nominee for the construction of storage lessor shall at such time notify lessee or its nominee what portion thereof it desires to have redeemed in fuel oil, and also what portion, if any, it desires to have redeemed in gasoline, kerosene, lubricating oils, and or other petroleum products for the use of the United States Navy and what portion, if any, pursuant to the conditions hereinbefore set forth, it desires to have redeemed in cash.

For those certificates which are to be redeemed in gasoline, kerosene, lubricating oils, and or other petroleum products for the use of the United States Navy the manner and basis of exchange and the conditions of delivery, shall be such as is hereafter mutually agreed upon between the parties hereto. Such certificates as are redeemed in cash shall be redeemed on the basis of the value of the crude oil as stated on the certificate. For those certificates which are to be redeemed in fuel oil the lessor shall notify the lessee or its nominee, on or before the expiration of the forty-five (45) day period above referred to, the amount of fuel oil it desires to have delivered, specifying the place or places of

said delivery, which shall be one or more of the delivery points hereinafter designated, and at the time such deliveries are made lessor will surrender to lessee or to its nominee oil certificates above referred to on the following basis of exchange, to-wit:

One (1) barrel of such fuel oil for each barrel of crude royalty oil of 34 degrees Baume, or over, represented on the face of the certificates;

Sixty-three per cent (63%) of one barrel of such fuel oil for one barrel of crude royalty oil of less than 34 degrees Baume represented on the face of the certificates.

Such fuel oil shall be delivered by lessee or his nominee at any of the following points at the option of the lessor expressed as provided in this lease, to-wit:

Houston, Texas.
Pensacola, Florida.
New Orleans, Louisiana.
Charleston, S. C.
Annapolis, Maryland.
Indian Head, Maryland.
New York, N. Y.
Machias, Maine.
Portsmouth, N. H.
Boston, Mass.
Melville, R. I.
Woods Hole, Mass.
New Haven, Conn.
Guantanamo Bay, Cuba.
Key West, Florida.
Mobile, Alabama.
Washington, D. C.
Baltimore, Maryland.
Norfolk, Virginia.
Philadelphia, Pa.
Bath, Maine.
Rockland, Maine.
Quincy, Mass.
Block Island, R. I.
New London, Conn.
Bridgeport, Conn.
Fall River, Mass.

All deliveries shall be in full tank ship lots at points where shore installations are sufficient to receive the same, except that lessee shall have the right to make delivery in less than a full tank ship lot if it so desires.

Where fuel oil is requested to be delivered at a point where there is no shore installation for discharge of ocean going vessels, deliveres of fuel oil for such points shall be made at the nearest terminal operated by the lessor where delivery from such vessels is practicable. All expense of making delivery of such oil from said terminal to the place where said delivery is requested to be made, including furnishing of installation and loading and unloading facilities, all
34 loading and unloading charges, freight and transportation charges, whether by rail or by water, and including barge and lighterage charges, shall be borne and paid for by the lessor.

The manner of delivery and inspection of the oil at point of loading, the manner and rate of discharge from vessels and/or tank cars, demurrage, notice of arrival, evidences of acceptance, issuance of deliver tickets, method of measuring cargo, force majeure, etc., shall be in accordance with the prevailing commercial practice in shipping and transportation business with reference to fuel-oil deliveries prevailing at the time such deliveries are made.

As to the said certificates which are to be redeemed in fuel oil and as well those certificates which are to be redeemed in gasoline, kerosene, lubricating oils, and/or other petroleum products for the use of the United States Navy, lessee or its nominee shall use due diligence to make such deliveries and shall make the same within a reasonable time after the notice above referred to has been given by lessor notifying lessee or its nominee of the amount of fuel oil it desires to have delivered, and the place or places of such delivery, or notifying lessee or its nominee of the amount of gasoline, kerosene, lubricating oils, and or other petroleum products which it desires to have delivered and the place or places of such delivery; and the lessor shall receive such deliveries at the time the same are tendered. For all of such certificates as are to be redeemed in cash, lessee shall make payment to lessor within fifteen (15) days after being notified by lessor of the amount of such certificates which it wishes to have redeemed in cash.

If by reason of delay caused solely by the lessee or its nominee sufficient steel tankage shall not have been constructed to receive fuel oil as and when the same shall be due from the lessee to the lessor, the lessee agrees that it will provide at its own expense for the storage of such fuel oil until sufficient tankage therefor belonging to the lessor shall have been constructed.

The fuel oil to be delivered to lessor hereunder by lessee or his nominee shall be of the specifications as follows, inspection to be made at port of loading, to-wit:

Bunker Fuel Oil A.

A hydrocarbon oil, free from grit, acid, and fibrous or other foreign matters likely to clog or injure the burners or valves. If required, it shall be strained by being drawn through filters or wire gauze of sixteen meshes to the inch. The clearance through the strainer shall be at least twice the area of the suction pipe, and the strainers shall be in duplicate.

35 Properties and Tests.

(1) Flash point, method No. 110-2: The flash point shall not be lower than 150 degrees F. (Pensky-Martens closed tester.) In case of oils having a viscosity greater than 30 seconds at 150 degrees F. (Saybolt Furol viscosimeter, 8 degrees Engler), the flash point shall not be below the temperature at which the oil has a viscosity of 30 seconds.

(2) Viscosity, method No. 303: The viscosity shall not be greater than 100 seconds at 77 degrees F. (Saybolt Furol viscosimeter.)

(3) Water and sediment, method No. 3003: Water and sediment combined shall not amount to over 1 per cent.

(4) All tests shall be made according to the methods for testing petroleum products adopted by the Interdepartmental Petroleum Specification Committee.

Provided, That if at any time in the future the lessor should desire to receive fuel oil of an inferior quality than that provided for herein, in exchange for said certificates representing crude royalty oil, the rate and basis of exchange for such fuel oil shall be the subject of such future contract as may be entered into between the lessor and the lessee.

5. To file with the Secretary of the Interior copies of all sale contracts for the disposition of casing-head gasoline and gas produced hereunder, except that used for production purposes on the lands hereby leased.

6. To furnish monthly statements, in detail, in such form as may be prescribed by the lessor, showing the amount, quality, and value of all oil and casing-head gasoline and gas saved during the preceding calendar month, as the basis for computing royalty due the lessor. The leased premises and all wells, improvements, machinery, fixtures thereon or connected therewith shall be open at all times for the inspection of any duly authorized officer of the Department of the Interior.

7. To furnish, when and at such times as the Secretary of the Interior shall require, in the manner and form prescribed by the Secretary, a plat showing all development work and improvements on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands.

8. Log of wells.—To keep a log in the form prescribed by the Secretary of all the wells drilled by the lessee, showing

the strata and character of the ground passed through by the drill, which log, or copy thereof, shall be furnished to said lessor on demand.

9. Diligence—Prevention of waste—Health and safety of workmen.—To exercise reasonable diligence in drilling and operating wells for the oil and gas on the lands covered hereby, while such products can be secured in paying quantities, unless consent to suspend operation temporarily is granted by the Secretary of the Interior; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the oil sands or oil-bearing strata to the destruction or injury of the oil deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely any well before abandoning the same so as to effectually shut off all water from the oil or gas bearing strata; not to drill any well within 200 feet of any of the outer boundaries of the lands covered hereby, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners; to conduct all mining, drilling, and related production operations subject to the inspection of the lessor; to carry out at expense of the lessee all reasonable orders and requirements of lessor relative to prevention of waste, and preservation of the property and the health and safety of the workmen, and on failure so to do the lessor shall have the right to enter on the property to repair damage or prevent waste at the lessee's cost; to abide by and conform to regulations in force at the time the lease is granted covering the matters referred to in this paragraph.

The lessee, however, shall not be held responsible for delays or casualties by causes beyond lessee's control. In all wells drilled the lessee agrees to make a test of each sand or oil horizon lying above the first Wall Creek sand for a sufficient period to establish to the satisfaction of the Secretary of the Interior whether or not such horizon is commercially productive of oil. In case any horizon so tested is found productive of oil in commercial quantities, the lessee on deepening this particular well shall land a string of casing below the horizon tested and fill the annular space between the outside of the casing and the wall of the hole with an amount of cement estimated to reach from the casing shoe to a point at least 75 feet above the top of the sand or hori-

zon, provided the Secretary of the Interior may, in his discretion, approve another method of protecting the upper sand or sands or horizons.

10. Taxes and wages—Freedom of purchase.—To pay when due, all taxes lawfully assessed and levied under the laws of the State upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom to purchase, and to pay all wages due work-
37 men and employees at least twice each month in the lawful money of the United States.

Article III.

For the purposes of the supervision of drilling for and production of oil and gas and the computation of royalties hereinbefore provided, the practices adopted by the Department of the Interior in the supervision of work under the leasing act of February 25, 1920, and embodied in the following:

1. Plan for conducting work under operating regulations to govern the production of oil and gas under the act of February 25, 1920, Public, 146, 1921.

2. Tables for computing oil royalties under the leasing act of February 25, 1920, by R. C. Patterson and D. W. Moran, 1921.

3. Leasing Circular No. 3D. Schedule adopted for royalties on gas and casing-head gasoline from Government leases under leasing act (Public, 146) where royalties are not specified in lease or special contract with the Government, 1921—shall, but only in so far as applicable, be applied to this lease.

Article IV.

1. Rights reserved—Easements and rights of way.—The right to permit for joint or several use easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same or of other lands containing the deposits referred to in this lease, and the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

2. Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted,

in so far as said surface is not necessary for the use of the lessee in the carrying out of the purposes of this contract.

Provided, however, That the lessor agrees that it will not grant to any other party any surface or other rights concerning the lands covered by this lease which will in any way interfere with the exercise of the rights hereby granted, or with the carrying out of the purposes of this lease.

3. Helium.—Pursuant to section 1 of the leasing act of February 25, 1920, the lessor reserves the right to take all helium from any gas produced under this lease, but the lessee shall not be required to extract and save the helium for the lessor; in case the lessor elects to take the helium, the lessee shall deliver all gas containing same, or portion thereof desired, to the lessor in the manner required by the lessor, for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

Provided, That the lessee shall not, as a result of the operation in this section provided for, suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise for which the lessee is not reasonably compensated, save for the value of the helium extracted; the lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

Provided, That the operation, if any, under this reservation, shall be carried on in such a manner as shall not interfere in any way with the operations of the lessee under this lease, or the carrying out of the purposes thereof.

4. Pipe lines to convey at reasonable rates.—The right to require the lessee, his nominee, his assignees, or beneficiary, if owner or operator of, or owner of a controlling interest in any pipe line, or any company operating the same which may be operated accessible to the oil derived from lands under such lease, to accept and convey at reasonable rates and without discrimination the oil of the Government or of any citizen or company, not the owner of any pipe line, operating a lease or purchasing oil or gas under the provisions of the leasing act of February 25, 1920. If the obligation of the lessee to construct the pipe line hereinbefore in this lease

referred to shall arise, and if at any time after such line is completed, the crude oil offered for transportation through such pipe line should be in excess of the capacity of the said line, the lessor herein reserves the right to require the lessee or its nominee or the successor in title of either of them in and to the said pipe line, to accept and convey at reasonable rates the royalty crude oil of the United States Government produced in the Salt Creek field, Wyoming, in preference to the oil of any other party.

Article V

Surrender and termination of lease.—The lessee may, by and with the consent and approval of the Secretary of the Interior, first had and obtained in writing, surrender and terminate this lease upon payment of all royalties, and other obligations due and payable to the lessor, and upon
39 payment of all wages and moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made full provision for conservation and protection of the property; upon like consent had and obtained the lessee may surrender any legal subdivisions of the area included herein.

Article VI

Purchase of materials, etc., on termination of lease.—Upon the expiration of this lease, or the earlier termination thereof, pursuant to the last preceding section, the lessor or another lessee may, if the lessor shall so elect within six months from the termination of the lease, purchase all materials, tools, machinery, appliances, structures, and equipment placed in or upon the land by the lessee, and in use thereon as a necessary or useful part of an operating or producing plant, on the payment to the lessee of such sum as may be fixed as a reasonable price therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee, and the other by the two so chosen; pending such election all equipment shall remain in normal position. If the lessor, or another lessee, shall not, within six months, elect to purchase all or any of such materials, tools, machinery, appliances, structures, and equipment, the lessee shall have the right at any time, within ninety days, to remove from the premises all the materials, tools, machinery, appliances, structures, and equipment which the lessor shall not have elected to purchase, save and except casing in wells

and other equipment or apparatus necessary for the preservation of the well or wells.

Article VII.

Judicial proceedings in case of default.—If the lessee shall make default in the performance or observance of any of the terms, covenants, and stipulations hereof, and such default shall continue for ninety (90) days after the service of written notice thereof by the lessor, then the lessor may institute appropriate judicial proceedings for the forfeiture and cancellation of this lease; but this provision shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any cause of forfeiture, or for the same cause occurring at any other time.

40 Article VIII.

Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to the heirs, executors, successors, or assigns of the respective parties hereto.

Article IX.

Unlawful interest.—It is also further agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

Article X.

Assignment.—This lease or any interest therein, as to all or any part of the lands covered thereby, may be assigned or sublet by the lessee, subject to the approval and consent,

in writing, of the Secretary of the Interior first had and obtained.

THE UNITED STATES OF AMERICA,
By Albert B. Fall,
Secretary of the Interior.
Edwin Denby, Secretary of the Navy.

MAMMOTH OIL COMPANY,
By H. F. Sinclair, President.

Attest:
N. D. Farham,
Assistant Secretary.

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41 Exhibit C.

Agreement Between the United States of America and Mammoth Oil Company Supplemental to Their Agreement of April 7, 1922, Relative to Naval Petroleum Reserve No. 3.

This agreement, supplemental to the Lease Contract dated April 7, 1922, hereinafter referred to, made and entered into this 9th day of February, 1923, by and between the United States of America, acting in this behalf by the Secretary of Interior and the Secretary of the Navy, party of the first part, and hereinafter referred to as "the Government," and Mammoth Oil Company, a corporation organized and existing under and by virtue of a laws of the State of Delaware, and having a place of business at 45 Nassau Street, New York City, party of the second part, and hereinafter referred to as "Mammoth," for themselves, their successors and assigns,

Witnesseth:

Whereas a certain contract was entered into by the above-named parties, dated April 7, 1922, hereinafter referred to as the "lease contract," wherein the Government leased to Mammoth for oil and gas purposes the lands in Naval Petroleum Reserve No. 3, Natrona County, Wyoming, and wherein it is provided inter alia that Mammoth shall acquire from the Government all of the royalty oil accruing to the Government under the terms of said Lease Contract and that in exchange for such royalty oil Mammoth shall set up an oil exchange credit in favor of the Government and issue to the

Government as evidence of receipt of royalty crude oil, oil certificates showing the amount and value thereof, said certificates to be redeemed by Mammoth either by (a) delivering to the Government fuel oil and or gasoline, kerosene, lubricating oil or other petroleum products for the use of the United States Navy, or (b) in liquidation of amounts advanced or expended by Mammoth or its nominee for the construction of steel tank storage for the Government necessary for containing said oils and petroleum products, or (c) in cash, as in the Lease Contract provided, and

Whereas said Lease Contract further provides that Mammoth shall, if and when requested by the Government, construct or pay the cost of construction of steel storage tankage up to but not in excess of such an amount as shall be estimated to be necessary or required for the storage
42 of fuel oil to be received by the Government in exchange for royalty crude oil, said storage to be constructed as, when and where the same shall become necessary or shall be required for the storage of said fuel oil so delivered by Mammoth or its nominee, the cost of such tankage to be liquidated by the Government by delivering to Mammoth or its nominee oil certificates hereinbefore mentioned of a face amount in value equal to the cost of such tankage, and

Whereas the Government has requested Mammoth to construct the storage tankage and facilities referred to in Article I of this Agreement, Mammoth to be reimbursed for the cost of such construction, but without profit to it, by the redemption of oil certificates in the manner provided in said Lease Contract, and

Whereas, the Government has requested that there be delivered into such storage tankage, as, when and where the same is completed, fuel oil and or other petroleum products in the amounts specified in Article I hereof, and to that end has exercised the option given to it under the terms of said Lease Contract to have oil certificates that have been or may be issued to it as provided therein (see copy over and above those required to liquidate the cost of said storage tankage and facilities) redeemed in fuel oil and or other petroleum products to be delivered into said storage tankage for the use of the United States Navy, and

Whereas, Mammoth, pursuant to said request, has signified its willingness, subject to the conditions hereinafter provided, to construct for the Government such storage tankage

and facilities and to fill such tankage with fuel oil and/or other petroleum products.

Now, therefore, in consideration of the mutuality hereof the parties hereto hereby enter into the following contract and agreement supplemental to and to be construed with the said Lease Contract of April 7, 1922:

Article I.

Subject to the terms and provisions of this Agreement Mammoth agrees to construct for the Government storage tankage and facilities, designated for convenience as "Projects A, B, C, and D," as follows:

Project A: Navy Yard, Portsmouth, N. H., particularly described in and covered by Y. & D. Specifications No. 4802, designed for the storage of 42,000 tons of fuel oil, 225,000 gallons of Diesel oil, 180,000 gallons of gasoline and 87,000 gallons of lubricating oils.

Project B: Naval Fuel Depot, Melville, R. I., particularly described in and covered by Y. & D. Specifications No. 4803, designed for the storage of 84,000 tons of fuel oil,
43 400,000 gallons of Diesel oil, 350,000 gallons of gasoline and 174,000 gallons of lubricating oils.

Project C: Governor's Island, Boston Harbor, particularly described in and covered by Y. & D. Specifications No. 4801, designed for the storage of 424,000 tons of fuel oil, 7,000 tons of Diesel oil, 1,800,000 gallons of gasoline and 900,000 gallons of lubricating oils.

Project D: Naval Fuel Station, Yorktown, Va., and Naval Mine Depot, Yorktown, Va., particularly described in and covered by Y. & D. Specifications Nos. 4804, 4805, 4806 and 4807 designed for the storage of 2,000,000 tons of fuel oil, 30,500 tons of Diesel oil, 26,500 tons of gasoline and 13,800 tons of lubricating oils. This Project D may be constructed as four separate units, each consisting of storage for 500,000 tons of fuel oil and for such portion of the total of the products other than fuel oil indicated herein as the Government shall select, as indicated by the specifications.

All the above projects are to be constructed for and are to be furnished to the Government at the cost thereof and without profit to Mammoth, and it is agreed that the Government, in lieu of paying therefor in cash shall reimburse Mammoth for such cost by delivering for redemption oil certificates, issued pursuant to the Lease Contract, of a face

value equal to such cost, as provided in Article III of this Agreement.

Upon the completion of each of said projects, and, in the case of Project D, upon the completion of each unit thereof, the storage tankage included in such project or unit (except tankage for gasoline) shall be filled by Mammoth with the products for which such tankage was designed, as indicated above, and in exchange for such products the Government shall tender to Mammoth for redemption oil certificates, issued pursuant to the Lease Contract, upon the basis and as provided in Article II of this Agreement.

It is agreed that Mammoth shall commence the construction of Project A immediately upon being furnished with plans and specifications therefor, and that it will complete the project with due diligence, provided that it shall not be required to commence the construction of said Project A if the estimated cost of such construction, as such estimated cost shall be agreed upon by the parties hereto upon the basis of such plans and specifications, shall exceed the sum of $2,000,000.

Upon the completion of Project A and after Mammoth has been reimbursed for the cost of construction thereof as provided in Article III hereof, and after the tankage included in said Project A (except that for gasoline) has been filled with the products for which it was designed, and Mammoth has received in exchange therefor oil certificates as provided in Article II hereof, and if the average daily production of the wells under the Lease Contract shall be at least 8,000 barrels for the period of 60 days immediately preceding the date of the receipt by Mammoth of oil certificates completing the total amount of oil certificates it is entitled to receive in exchange for the products delivered into the tankage of Project A as such average daily production shall be computed by Mammoth and the Bureau of Mines, Mammoth shall commence the construction of Project B and complete the same with due diligence, provided, however, that Mammoth shall not be required to commence the construction of Project B if the estimated cost of such project, as such estimated cost shall be agreed upon by the parties hereto upon the basis of the plans and specifications furnished or aproved by the Government, shall exceed the sum of $2,000,000.

In the event that the average daily production for the period indicated above shall be less than 8,000 barrels Mam-

moth shall then undertake the construction of such part of said Project B as the Government may designate provided that the estimated cost thereof as the same shall be agreed upon by the parties hereto shall not be more than the total value of the oil certificates then accumulated plus those reasonably to be expected to accrue thereafter from exchange for royalty crude oil and upon completion of such work and upon the filling of the tankage included in same (except that for gasoline) under the provisions of Article II Mammoth shall then undertake such further construction under such Project B and filling as the reasonable expectation of further accrual of oil certificates shall warrant.

Upon completion of Project B, and after Mammoth has been reimbursed for the cost of construction thereof as provided in Article III hereof, and after the tankage included in said Project B (except that for gasoline) has been filled with the products for which it was designed and Mammoth has received in exchange therefor oil certificates as provided in Article II hereof, Mammoth shall commence the construction of Project C and complete the same with due diligence; provided, however, that Mammoth shall not be required to commence the construction of Project C until the Government has accumulated oil certificates equal in face value to 50% of the estimated cost of such Project C, as such estimated cost shall be agreed upon by the parties hereto upon the basis of plans and specifications furnished or approved by the Government, and provided further, that Mammoth shall not be required to commence the construction of said Project C unless the average daily production of the wells under the Lease Contract shall equal at least 15,000 barrels for a period of 60 days immediately preceding the date the Govern-
45 ment shall notify Mammoth in writing that it has accumulated oil certificates equal in face value to 50% of such estimated cost of said Project, as such average daily production shall be computed by Mammoth and the Bureau of Mines. In the event that the average daily production for the period indicated above shall be less than 15,000 barrels, Mammoth shall then undertake construction of such part of said Project C as the Governemnt may designate, provided that the estimated cost thereof, as same shall be agreed upon by the parties hereto, shall not be more than the total value of the oil certificates then accumulated plus those reasonably to be expected to accrue thereafter from exchange for royalty crude oil, and upon completion of such work and upon the filling of the tankage included in same (except that for

gasoline) under the provisions of Article II, Mammoth shall then undertake such further construction under said Project C and filling as the reasonable expectation of further accrual of oil certificates shall warrant.

Upon the completion of Project C, and after Mammoth has been reimbursed for the cost of construction thereof, as provided in Article III hereof, and after the tankage included in said Project C (except that for gasoline) has been filled with the products for which it was designed and Mammoth has received in exchange therefor oil certificates as provided in Article II hereof, Mammoth shall commence the construction of any one unit of Project D which the Government may then select and shall complete the same with due diligence; provided, however, that Mammoth shall not be required to commence the construction of such unit of Project D until the Government has accumulated oil certificates equal in face value to 50% of the estimated cost of such unit, as such estimated cost shall be agreed upon by the parties hereto upon the basis of plans and specifications furnished or approved by the Government; and provided, further, that Mammoth shall not be required to commence the construction of such unit unless the average daily production of the wells under the Lease Contract shall equal at least 15,000 barrels for a period of 60 days immediately preceding the date the Government shall notify Mammoth in writing that it has accumulated oil certificates equal in face value to 50% of such estimated cost of said unit as such average daily production shall be computed by Mammoth and the Bureau of Mines. In the event that the average daily production for the period above indicated shall be less than 15,000 barrels, Mamomth shall then undertake construction of such part of said unit as the Government may designate provided that the estimated cost thereof, as same shall be agreed upon by the parties hereto, shall not be more than the total value of
the oil certificates then accumulated plus those reason-
46 ably to be expected to accrue thereafter from exchange
for royalty crude oils, and upon completion of such work and upon the filling of the tankage included in same (except that for gasoline) under the provisions of Article II, Mammoth shall then undertake such further construction under such unit and filling as the reasonable expectation of further accrual of oil certificates shall warrant.

Upon the completion of any unit of Project D, (until all the units of said Project shall have been constructed) and after Mammoth has been reimbursed for the cost of construc-

tion thereof as provided in Article III hereof, and after the tankage included in said unit (except that for gasoline) has been filled with the products for which it was designed and Mammoth has received in exchange therefor oil certificates as provided in Article II hereof, Mammoth shall commence the construction of another unit of Project D and complete the same with due diligence; provided, however, that Mammoth shall not be required to commence the construction of such unit until the Government has accumulated oil certificates equal in face value to 50% of the estimated cost of such unit, as such estimated cost shall be agreed upon by the parties hereto upon the basis of plans and specifications furnished or approved by the Government; and provided further, that Mammoth shall not be required to commence the construction of such unit unless the average daily production of the wells under the Lease Contract shall equal at least 15,000 barrels for a period of 60 days immediately preceding the date the Government shall notify Mammoth in writing that it has accumulated oil certificates equal in face value to 50% of such estimated cost of said unit as such average daily production shall be computed by Mammoth and the Bureau of Mines. In the event that the daily average production for the period indicated above shall be less than 15,000 barrels, Mammoth shall then undertake construction of such part of said unit as the Government may designate, provided that the estimated cost thereof, as same shall be agreed upon by the parties hereto, shall not be more than the total value of the oil certificates then accumulated plus those reasonably to be expected to accrue thereafter from exchange for royalty crude oils, and upon completion of such work and upon the filling of the tankage included in same (except that for gasoline) under the provisions of Article II, Mammoth shall then undertake such further construction and filling under such unit as the reasonable expectation of further accrual of oil certificates shall warrant.

It is hereby agreed that the order of construction and the terms of beginning work on the projects hereinbefore described, other than Project A, may be altered or modified by mutual consent.

47 All work to be performed under this Agreement shall, unless otherwise ordered by the Government, be done under the direct supervision of Mammoth but upon plans and specifications which shall be furnished or approved by the Government and under inspection by the latter. Except by mutual agreement, Mammoth will not be responsible for de-

fects or results in any work done under this Agreement save as they may be caused by failure on its part or that of its nominee to follow the plans and specifications furnished or approved by the Government or to do the work in accordance with such plans, specifications or orders of the Government.

The Government agrees that save upon written agreement with Mammoth it will make no change in the plans or specifications of any of said projects listed above after the same shall have been furnished to Mammoth, which will increase the cost of such project in excess of 20% of the estimated cost, as such estimated cost shall be determined prior to the commencement of said project by Mammoth. It is further agreed that, without the mutual agreement of the parties hereto, no change in the plans or specifications of any of such projects shall be made which will involve a change exceeding 5% either in the total capacity of the storage tankage included in such projects or in the amount of each product herein provided to be delivered into said tankage under this Agreement.

It is understood and agreed that Mammoth shall have the right, if it so desires, to cause all or any part of the work hereunder to be done under subcontracts; provided, however, that Mammoth will cause any work to be done under subcontract at the direction of the Government.

The Navy Department shall exercise direct control over all technical matters in connection with plans and specifications for the storage and storage facilities and the supervision of construction, and the Chief of the Bureau of Yards and Docks is hereby designated to represent the Government in all such matters. It is understood and agreed that he must exercise control over the supervision of subcontract work, over the purchase of materials, apparatus and supplies and over the supervision of the remainder of the work. In case of disagreement between field representatives of Mammoth and of the Bureau of Yards and Docks, appeal may be taken to the Chief of that Bureau and if his decision be unacceptable to Mammoth, from him to the Secretary of the Navy, notice of such appeal being routed through the usual channels. Such appeals to the Chief of the Bureau of Yards and Docks and or to the Secretary of the Navy shall be without prejudice, however, to any right or remedy Mammoth would otherwise have in connection with any such disagreement.

48 It is hereby agreed that upon completion of all of the projects hereinbefore described, additional projects

required by the Navy Department for storage of reserved petroleum products shall be undertaken by Mammoth or its nominee and after construction will be filled by Mammoth with the products for which they are designed, under the same conditions and in the same manner as provided in this Agreement in respect of the construction of Projects C and D and of the filling of the tankage included therein.

Article II.

As and when each of the projects described in Article I, and, in the case of Project D each of the units thereof, shall have been completed, the tankage included in such project or unit (except that for gasoline) shall be filled by Mammoth with the products for which such tankage was designed subject to the following terms: Upon completion of each such project or unit and before any succeeding project or unit shall be commenced by Mammoth and after Mammoth has been reimbursed for the cost of such project or unit through the redemption of oil certificates as hereinafter in Article III provided, the Government shall, as and when oil certificates are delivered to it by Mammoth under the provisions of the Lease Contract, tender such an amount of said oil certificates for redemption in fuel oil and Diesel oil and lubricating oils as may be required to fill the tankage included in such project or unit (except that for gasoline) with the products for which such tankage was designed as indicated in Article I hereof; and the Government, pursuant to Section 3 of Article II of said Lease Contract hereby elects that such an amount of oil certificates shall be so redeemed. It is understood and agreed that the tankage constructed by Mammoth hereunder which is designed for the storage of gasoline shall not be filled pursuant to this Agreement until arrangements therefor shall be made by mutual agreement of the parties, and pending the making of such arrangements no oil certificates shall be tendered by the Government for redemption or redeemed by Mammoth in gasoline.

As to the oil certificates to be redeemed in fuel oil, the basis of exchange shall be as provided in the Lease Contract, namely, one barrel of such fuel oil for each barrel of crude royalty oil of 34 Degrees Baume or over represented on the face of the certificates, and 63% of one barrel of such fuel oil for one barrel of crude royalty oil of less than 34 Degrees Baume represented on the face of the certificates. The specifications of all fuel oil delivered pursuant to this Agreement and the manner and conditions of delivery of such fuel oil shall be as provided in the Lease Contract.

49 As to the oil certificates to be redeemed in Diesel oil and lubricating oil, the basis of redemption shall be the face value of the certificates and the market value of such products at the time of delivery based upon current sales by Mammoth of products of like grade and quantity, the Government to be charged by Mammoth for transporting such products to place of delivery at then going rates and for all handling costs actually incurred. In no case shall the charge to the Government for Diesel oil and lubricating oils exceed the then current contract price under Navy contracts for similar products, and Mammoth shall have the right to fill any order of the Government for such products, if it so elects, through contracts placed or to be placed by the Navy Department. All such products shall conform to Navy specifications and deliveries of such products shall be made in such manner as may be mutually agreed upon by the parties hereto.

It is understood and agreed in connection with the filling of storage tankage of each project or unit, that save by mutual consent the amount of fuel oil and Diesel oil and of lubricating oils for which tankage is designed as set forth in Article I of this Agreement shall not be increased or diminished except to the extent of 5% for each such product in the event of a change in specifications as permitted by Article I hereof.

Subject to the provisions of the foregoing paragraph, the Government shall give notice to Mammoth on the 25th day of each month as to the amount of oil certifiactes on hand available for redemption under this Agreement in fuel oil and or other products, and shall direct Mammoth as to how it desires such oil certificates redeemed, that is, whether in fuel oil, Diesel oil, or lubricating oils. As soon as practicable after Mammoth has received such notice, it shall deliver the fuel oil and or other products so requested by the Government to be delivered. When such deliveries shall have been made and accepted by the Government, Mammoth shall notify the Government, and thereupon the Government shall deliver to Mammoth such an amount of oil certificates in exchange for the products so delivered as shall be proper on the basis of exchange and or redemption as hereinbefore provided.

Mammoth shall have the right and option at any time or from time to time prior to the completion as a whole of either Project A or Project B or Project C, or any unit of Project D, and or prior to any tender by the Government of oil cer-

tificates for redemption in fuel oil and/or other products as hereinabove provided in this Article, to deliver into any tankage included in said project or unit (except that for gasoline) that shall have been accepted by the Government as complete, such amounts of the products for which said tankage was designed (except gasoline) as Mammoth may desire, and any such fuel oil and or other products so delivered shall become the property of the Government and the value thereof, pending liquidation by delivery to Mammoth of oil certificates therefor for redemption in accordance with the provisions of this Agreement, shall be carried into the deferred account provided for in Article III and shall bear interest as provided in Article IV in respect of such deferred account.

It is agreed that the storage tankage constructed by Mammoth hereunder (except that for gasoline) shall be originally filled only with the products for which such tankage is designed furnished to the Government by Mammoth pursuant to this Agreement and that the Government shall not be obligated to compensate Mammoth for such storage tankage and facilities and such products other than by delivering for redemption oil certificates issued pursuant to the Lease Contract as provided in this Agreement, but that until this agreement shall be fully performed all the oil certificates accruing to and received by the Government under the Lease Contract shall be used for the purposes of constructing and filling storage facilities pursuant to this Agreement. Oil certificates when delivered in accordance with the provisions of this Agreement for any of the purposes hereof shall be accepted by Mammoth as reimbursement for such purpose to the extent of the full face value thereof.

Article III.

The Director of the Bureau of Mines is hereby designated as the representative of the Government to administer all questions arising between Mammoth and the Government under the provisions of Articles III and IV of the Lease Contract. In case of any disagreement between field representative of Mammoth and of said Bureau appeal may be taken to the Director and in the event that his decision proves unacceptable to Mammoth, through him to the Secretary of the Interior, notice of such appeal being routed through the usual channels; provided, however, that nothing herein is intended or shall be construed to deprive Mammoth of any legal or equitable right it may have in the event of any decision adverse to it.

The auditing of all accounts under the provisions of this supplemental Agreement shall be done by the representative of the Department of the Interior for the Navy Department according to methods to be agreed upon from time to time by the parties hereto. Pending any such agreement the methods now in use governing the work now under way for
51 the Navy at Pearl Harbor, T. H., by virtue of a contract made April 25, 1922, between the Government and the Pan-American Petroleum and Transport Company shall apply.

On or before the 10th day of each month the Bureau of Yards and Docks shall issue to Mammoth a certificate as to the amount of work done, supplies and/or materials purchased, and/or other matters properly chargeable to the work during the preceding calendar month. If the certificate so rendered by the said Bureau shall be for an amount less than the amount claimed by Mammoth to be then due to it for work done, supplies and/or materials purchased and/or other matters properly chargeable to said work, an appeal may be taken by Mammoth to the Chief of said Bureau, and in the event that his decision proves unacceptable to Mammoth, a further appeal may be taken to the Secretary of the Navy; provided, however, that nothing herein is intended or shall be construed to deprive Mammoth of any legal or equitable right it may have in the event of any decision adverse to it.

The certificates so issued by the Bureau of Yards and Docks to Mammoth as above provided, or said certificates as the same may be modified on appeal as above provided, shall be presented by Mammoth to the Director of the Bureau of Mines, together with all vouchers, showing details of all payments made and shall be promptly audited by said Bureau.

On or before the 25th day of each month the Government shall reimburse Mammoth for the cost of said storage and/or other facilities incurred during the preceding calendar month as shown by the audited cost made by the Bureau of Mines, by delivering to Mammoth for redemption oil certificates equal in face value to such cost. If on the 25th of each month the Government shall not have accumulated oil certificates which at their face value are sufficient to reimburse Mammoth for the cost of the work done during the preceding calendar month, the unpaid portion of the cost of the work up to such time shall be carried in a deferred ac-

count and Mammoth shall be reimbursed therefor in oil certificates as soon as the Government shall have acquired certificates sufficient for the payment thereof. In case of disagreement as to any item or items of a claim made by Mammoth under this Agreement, the remaining portion of such claim not in dispute shall proceed to liquidation or be carried into a deferred account as above provided, without prejudice to further consideration of the item or items in dispute. If the item or items in dispute shall be finally allowed the amount thereof shall bear interest at the rate of 5% per annum from date of suspension until paid.

52 The cost of the work to be done by Mammoth as provided in Article I hereof shall include:

(1) The cost of all subcontracts.

(2) The cost of all materials, apparatus and supplies and of all labor, not included under (1).

(3) The cost of tools and construction plant if purchased and the rental of such if hired, including temporary buildings and equipment, engineering instruments, furniture and fixtures, purchase or rental of automobiles, not included under (1).

(4) The cost of and the expenses of maintaining the necessary Field Offices, including rent, telegraph, telephones, radio, postage, stationery, freight expenses, cartage, operating automobiles, and including the salaries and expenses of a Superintendent of Construction, a Resident Engineer, an Accountant, and their necessary assistants, with the costs of such supplies and services as the conduct of the work shall require.

(5) The cost of procurement of labor, the cost of tracing shipment and transportation, and the cost of material and work inspection, not included under (1).

(6) The cost of insurance of whatsoever nature placed, and the cost of Contract Fidelity and other bonds, not included under (1).

(7) The cost incurred in connection with any accident or damage to person or property, not included in (1).

(8) The cost of such engineers and draftsmen in Mammoth's New York and other offices as may be actually employed on the work, the cost of traveling or similar expenses for New York Office or Field Office men, and any

other expenditures Mammoth may make on the Government's behalf.

(9) The cost of rights of way, permits, approaches, crossings, and other facilities necessary for the prompt carrying out of the work and not included under (1).

(10) An equitable portion of the salaries paid the Executive officers for administering the engineering, purchasing, construction, accounting, and other work performed under this Agreement which they will direct and manage and for consulting at the site of the work, and an equitable portion of the salaries of its Manager of Purchases and of its Purchasing Department at its New York or Field Officer in purchasing and expediting delivery of materials, apparatus, and supplies; an equitable portion of the salaries paid the Accounting, Auditing and Cost Departments, the Construction Supervisor and the Construction Department in its New York Office; all legal expenses, including salaries or fees paid attorneys, or their assistants, actually employed in the work and for the time so employed, including
53 stenographic fees and expenses, and cost of all litigation, including necessary traveling and incidental expenses of attorneys.

(11) Any and all other expenses actually incurred by Mammoth or contracted to be made in constructing or causing to be constructed the work herein specified.

The purpose and intent of this and preceding clauses being to provide that Mammoth shall receive complete reimmursement for, and only for all such reasonable expenditures as it shall incur in the carrying out of this Agreement.

In respect to insurance it is understood that insurance will be placed under policies of the usual form covering the liability of Mammoth and the Government to the public and to employees engaged at the work, to the amount of at least $30,000 for any one person and at least $50,000 for any one accident, unless the Workmen's Compensation Laws indicate the desirability of insurance in some other amount or form.

Article IV.

It is hereby mutually agreed that that portion of item (c) section 3, Article II, of the Lease Contract providing that oil certificates shall be redeemed at face value shall

until this Agreement shall have been fully performed be modified to the effect that said certificates shall be redeemed at face value plus interest at the rate of 5% per annum from the date of issue to date of redemption. On all unsettled balances due Mammoth and carried from time to time into the deferred account as provided in Article III of this Agreement, interest shall be paid in oil certificates at the rate of 5% per annum; all interest charges to be adjusted monthly on the basis of outstanding balances on the last day of each month, said oil certicates tendered by the Government being first applicable to extinguishment of any outstanding interest account balance.

Article V.

It is agreed that Mammoth shall not be liable for delays of failure in the performance of its covenants hereunder resulting from any cause beyond its control, including its inability to secure subcontracts from responsible contractors for any project or part of any project and also including Acts of God, lightning, floods, earthquakes, explosions, epidemics, lockouts, strikes or other industrial disturbances, breaks in pipe lines, perils of the sea, fires, blockades, wars, insurrections, commandeering of vessels, equipment and/or supplies.

Article VI.

54 It is mutually agreed by and between the parties hereto that Mammoth may designate any person or corporation as its nominee to carry out for it its obligations hereunder, in which event the Government shall cooperate and deal with said nominee as though it had been the real party in interest instead of Mammoth; provided, however, that such designation shall not relieve Mammoth of any of its obligations hereunder to the Government.

Article VII.

Mammoth agrees that the bond heretofore executed by it pursuant to the Lease Contract in the sum of $250,000 and on which H. F. Sinclair, E. W. Sinclair, and Sinclair Refining Company are sureties and likewise the bond heretofore executed by Mammoth pursuant to the Lease Contract in the sum of $250,000 and on which the United States Fidelity & Guaranty Company is surety shall be held by the Government as a guaranty of the compliance by Mammoth of its obligation under the terms and provisions of this Agreement.

Article VIII.

This contract is supplemental to the Lease Contract of April 7, 1922, and is to be construed as in execution of said Lease Contract to the extent that the Government has elected to redeem such an amount of oil certificates in accordance with this Agreement as shall be necessary for the full performance hereof, and until this Agreement has been fully performed the provisions of the Lease Contract in respect of notice to be given by the Government to Mammoth as to how it elects to have oil certificates redeemed and in respect of the period of time within which the Government must tender oil certificates for redemption shall be inoperative but after this Agreement shall have been fully performed, all the provisions of the Lease Contract shall operate just as though this Agreement had never been made.

Article IX.

It is further agreed that no member or delegate to Congress or resident commissioner after his election or appointment, or either before or after he has qualified and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior or the Department of the Navy shall be admitted to any share or part in this Agreement or derive any benefit that may arise therefrom; and
55 the provisions of Section 3741 of the Revised Statutes of the United States and Sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts, enter into and form a part of this Agreement so far as the same may be applicable.

In witness whereof, the parties hereto have set their hands and seals in the City of Washington, D. C., the day and year first above written.

THE UNITED STATES OF AMERICA.
By Albert B. Fall,
Secretary of the Interior.
By Edwin Denby,
Secretary of the Navy.

(Seal)
John K. Robison.

MAMMOTH OIL COMPANY.
By J. W. Zevely,
Vice President.

Attest:
N. D. Parham, Asst. Secretary.

Witnesses:
G. T. Standford.
R. W. Ragland.

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56 (Order restraining Defendant Mammoth Oil Co. from further drilling and appointing Receivers, etc.)

In the District Court of the United States for the District of Wyoming.

United States of America, Plaintiff,
No. 1431. vs. In Equity.
Mammoth Oil Company, et al., Defendants.

Now, on this 13th day of March, 1924, this cause came to be heard upon the verified bill of complaint filed herein, and the motion for the allowance of a preliminary injunction and the appointment of receivers and the affidavits in support thereof filed by plaintiff, and it appears that defendants have appeared by counsel, who were advised of said motion and have waived notice thereof, and that it is to the interest of all parties to this cause that the property which is the subject matter of the suit be protected and administered under the control and order of this Court, pending a final decision and determination of the rights of the respective parties hereto to the end that whichever party shall ultimately prevail shall suffer the least possible loss and damage due to the pendency of this suit, and that it may be necessary in the best interest of both parties and for the protection of the property to continue the operation and development of off-set wells on the land in controversy and to take other and further action in the administration and operation of the same, and pending the final determination of this cause, that it is to the best interest of both plaintiff and defendants that receivers be appointed to control and operate said premises under the orders of this Court.

57 Whereupon, after consideration of the evidence and argument of counsel, it is ordered, adjudged and decreed as follows:

1. That an injunction issue against the defendant, Mammoth Oil Company, its servants, agents and employees, enjoining and restraining them, and each of them, until the further order of this Court, from doing any further drilling

upon the premises described in said bill, and from operating the wells now drilled thereon, or from interfering with the possession and control of the receivers hereinafter appointed in this order.

2. That Joseph Strauss and Albert E. Watts be, and are, hereby appointed receivers and authorized and directed to take possession of said lands and all property now located thereon and belonging to defendant, Mammoth Oil Company, and used for the operation of the wells now located thereon and the production of Oil and Gas therefrom, and to hold, control and operate said wells and any other wells hereafter ordered drilled by this Court, until the further order of this Court; Provided, However, that said receivers shall not take possession or control, unless ordered to do so by the further order of this Court, of the seventeen (17) steel oil storage tanks located upon portions of Sections Twenty-seven (27) and Thirty-four (34) of the real property mentioned in said bill, said tanks being numbered 2004 to 2020, both inclusive, nor the contents thereof, which tanks and contents are claimed as the property of the defendant, Sinclair Crude Oil Purchasing Company; and Provided, Further, that said receivers shall not take possession or control unless ordered to do so by the further order of this Court, of the pump station, bunk houses, ware house, office, boiler house, reservoir, or pumps or machinery and other property located therein, nor of the pipe line crossing the real property described in
58 said bill, nor of the four (4) steel oil storage tanks numbered 832, 833, 834, and 835, all said buildings and tanks being located on the Northwest quarter (NW¼) of Section Twenty-seven (27) of said real property; nor shall they take possession or control of the six (6) cottages located near the northeast corner of Section Twenty-three (23) of said real property, which pump lines, pump station, cottages, tanks and other buildings in this proviso mentioned are claimed as the property of the defendant, Sinclair Pipe Line Company.

3. That said receivers shall continue the operation of the wells and equipment used in connection therewith only to such extent as they shall deem necessary to prevent loss or damage, after a full investigation and conference with the parties hereto, or their duly accredited representatives, and for that purpose said receivers are hereby authorized to operate the existing wells now on said premises and to produce and take the oil and gas therefrom, and until the further order of this Court to sell such oil and gas so produced from said

wells at the market price for the same, and in accordance with the terms and provisions of the contract heretofore executed between said defendant, Mammoth Oil Company, and said defendant, Sinclair Crude Oil Purchasing Company, under which contract said oil has been heretofore sold, and to collect the sale price thereof, and they are hereby authorized to deposit the proceeds received from the sale of said oil under said contract and from the sale of the natural gas or casing head gas, if any, in The Stock Growers National Bank of Cheyenne, Wyoming, to their credit as receivers of this Court, and to check out and expend of the funds so deposited so much thereof as may be necessary to pay the reasonable and proper cost of operating of said property, including the wells thereon and equipment used in connection therewith; and to hold the balance in said account for the protection of all parties to this cause and subject to such fur-
59 ther order as this Court may make with respect thereto; Provided, However, that said receivers shall keep a separate account of the costs of operation and proceeds of operation of the Southeast quarter (SE^1_4) of Section Twenty (20), Township Thirty-nine (39) North, Range Seventy-eight (78) West, as distinguished from the rest of the property, and shall pay into the Registry of this Court the proceeds of all oil taken from said Southeast quarter (SE^1_4) of Section Twenty (20), less the expense of operation thereof, and less the expense of any further drilling thereon which may be ordered by this Court, the said proceeds to be paid into the Registry of this Court on or before the 20th day of each months for the proceeds accruing during the preceding month, and a full report of the operation of the said Southeast quarter (SE^1_4) of Section Twenty (20), and of the proceeds thereof, shall accompany the said payment, which report shall include the amount of all oil taken from the said Southeast quarter (SE^1_4), the price received therefor, and to whom sold, and a statement of the expenses of operation for the month covered by such report.

4. That either or both of the parties hereto, or the said receivers may apply to this Court from time to time upon ten (10) days' notice for such further orders and directions concerning the administration of said property or the development or operation thereof, or the deposit, collection or disbursement of any of said funds coming into the possession of said receivers, as may be deemed advisable.

5. The said receivers shall, on or before the 20th of each month file their written report with the Clerk of this Court

showing their acts as such receivers during the preceding calendar month, the amount of oil produced during such
60 preceding month, and the costs and expenses sustained and paid for the operation of said property during said month; and in their said report said receivers shall account separately for all the oil produced, and the proceeds received from the sale thereof, and costs and expenses of operation the following described tract of land:

The West half (W½) of the Northwest quarter (NW¼) of Section Twenty-eight (28), Township Thirty-nine (39), Range Seventy-eight (78) West.

And shall likewise separately report in reference to such other separate tracts of land as the Court from time to time shall order, and said receivers shall report such other information as they deem advisable should be filed, and shall deliver to the accredited representatives of each of the parties hereto a copy of said report so filed with the Clerk of the Court.

6. That the said receivers shall give a joint bond with surety to be approved by this Court for the faithful performance of their duties as such receivers in the sum of Fifty thousand dollars ($50,000.00).

7. That the Court from time to time will make such further orders concerning the reports or operations of said receivers, or the development and operation of said property for oil and gas mining purposes, and the deposit or disposition of such receivers' funds as the Court may deem advisable or proper, after notice and hearing to the respective parties, either upon suggestion of the Court, or upon application of any party of record to this suit.

By the Court:

T. BLAKE KENNEDY, Judge.

Endorsements: In Equity. No. 1431 Civil. In the District Court of the United States for the District of Wyoming. United States of America, Plaintiff, vs. Mammoth Oil Comany, et al., Defendants. Order. Filed Mar. 13, 1924, Charles J. Ohnhaus, Clerk.

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62 (Answer of Defendant Mammoth Oil Co.)

(Filed Apr. 19, 1924, Charles J. Ohnhaus, Clerk.)

This defendant now, and at all times, saving and reserving unto itself all benefit and advantages of exception which can

or may be had or taken to the errors or uncertainties or other imperfections in said bill of complaint contained, for
63 its separate answer thereto or unto so much and such parts thereof as said defendant is advised is or are material for it to answer unto, says as follows:

1. For its answer to paragraph 1 of said bill of complaint, this defendant admits that it is, and at all times mentioned in the bill of complaint, was, a corporation organized and existing under the laws of the State of Delaware, and a citizen and resident of the said State, having its principal office and place of business in Wilmington, in said State, and that it is doing business within the State of Wyoming.

2. For its answer to paragraph 2 of said bill of complaint, this defendant admits that the defendant Sinclair Crude Oil Purchasing Company is and at all times in said bill of complaint mentioned was a corporation organized and existing under the laws of the State of Delaware and a citizen and resident of said State, having its principal office and place of business in Wilmington in said State, and that it is doing business within the State of Wyoming.

3. For its answer to paragraph 3 of said bill of complaint, this defendant admits that the defendant Sinclair Pipe Line Company is and at all times mentioned in said bill of complaint was a corporation organized and existing under the laws of the State of Maine, and a citizen and resident of said State, having its principal office and place of business in Portland in said State. This defendant denies that defendant Sinclair Pipe Line Company is doing business within
64 the State of Wyoming, but admits that said defendant Sinclair Pipe Line Company owns property situated in said State.

4. For its answer to paragraph 4 of said bill of complaint, this defendant admits that at the times mentioned in said bill of complaint and long prior thereto, the plaintiff, The United States of America, was and that it still is the owner in fee of the lands in the fourth paragraph of the said bill of complaint described, and that said land was part of the unappropriated public domain of the United States of America.

5. For its answer to paragraph 5 of said bill of complaint, this defendant admits that there were and are large quantities of petroleum contained within the general exterior boundaries of the said lands, and that the said lands at and long prior to the times mentioned in said bill of complaint had been

duly and lawfully set apart and dedicated as a naval oil reserve of the United States by proclamation and order of the President of the United States and by the action of the Congress thereof, and that by said action all entry rights theretofore existing and not previously exercised with regard to the said lands were terminated and repealed.

6. For its answer to paragraph 6 of said bill of complaint, this defendant admits that from March 5, 1921, until March 4, 1923, Albert B. Fall was the duly appointed, qualified and acting Secretary of the Interior of and for the
65 United States of America, and that during the same period Edwin Denby was the duly appointed, qualified and acting Secretary of the Navy of and for the United States of America.

7. For its answer to paragraph 7 of said bill of complaint, this defendant admits that an act of Congress of the United States approved June 4, 1920, contains the provisions alleged in paragraph 7 of the bill of complaint, and that said act is unrepealed and unmodified by any subsequent legislation, and has at all times since its enactment been in full force and effect.

8. For its answer to paragraph 8 of said bill of complaint, this defendant admits that the lands described in paragraph 4 of said bill of complaint are included among others in the lands described in said act of Congress.

9. For its answer to paragraph 9 of said bill of complaint, this defendant admits that on or about May 31, 1921, the President of the United States did make, sign and promulgate a certain order known as an Executive Order, a copy of which is annexed to said bill of complaint marked "Exhibit A."

10. For its answer to paragraph 10 of said bill of complaint, this defendant denies that said order was invalid, illegal or of no force or virtue in law and denies that it was ever known so to be by Albert B. Fall or by this defendant.

66 11. For its answer to paragraph 11 of said bill of complaint, this defendant alleges that if such order was obtained from the President of the United States by representations, persuasions or activities of Albert B. Fall, and if the said President in making said order acted upon such representations, neither this defendant nor any one at any time connected with this defendant as promoter or officer, or

in any other capacity whatsoever, had at the time of the execution and promulgation of said order or at any time any knowledge of the same. If any false representation was made by Albert B. Fall in connection with the issuance of said order, and if said Albert B. Fall desired that said order should be made in order that he, the said Albert B. Fall, as Secretary of the Interior, might deal with the said lands, not in the interest of the United States, but to the advantage, profit or benefit of this defendant, or of any one at any time connected with this defendant, or in particular, of one Harry F. Sinclair, who, this defendant admits, was the promoter and organizer and is an officer and a large stockholder of this defendant, and if said Albert B. Fall had any intention to act otherwise than for the public benefit and for the advantage of the United States in connection with the execution and promulgation of said order, neither this defendant nor any one at any time connected with this defendant, as promoter or officer, or in any other capacity whatsoever, had at that time, or now has any knowledge thereof. If any repre-
67 sentation was made by the said Albert B. Fall to the President of the United States which was in the interest of or for the purpose of ultimately benefiting this defendant, or not in the interest of and for the benefit of the United States of America neither this defendant nor any one at any time connected with this defendant as promoter or officer or in any other capacity whatsoever, ever had any knowledge of the same.

12. For its answer to paragraph 12 of said bill of complaint, this defendant alleges that if said Albert B. Fall made any representation to the President of the United States in connection with the execution or promulgation of said Executive Order, which was false or untrue, or which was known to said Albert B. Fall to be false or untrue, or which was made by him for the unlawful purpose of enabling him, as Secretary of the Interior, to effect a pretended or unlawful transfer of rights in said lands from the Government of the United States to this defendant, neither this defendant, nor any one at any time connected with it as promoter or officer, or in any other capacity whatsoever, ever had any knowledge thereof.

13. For its answer to paragraph 13 of said bill of complaint, this defendant admits and alleges that the agreement, copy of which is attached to the bill of complaint marked "Exhibit B," was executed in April, 1922, by Albert B. Fall and Edwin Denby, Secretary of the Interior and Secretary

of the Navy, respectively, in their official capacities, in and by which the plaintiff leased to this defendant the lands
68 described in paragraph 4 of said bill of complaint, but denies that such execution was pursuant to or under the Executive Order of the President, copy of which is attached to the bill of complaint, marked "Exhibit A." And this defendant admits and alleges that the officers of this defendant did in April, 1922, likewise execute the said agreement "Exhibit B." And defendant denies that the execution of the said instrument on behalf of the United States or on behalf of this defendant was a purported act, or otherwise than an act in good faith and with authority; and defendant alleges that the execution of the said agreement and indenture of lease was and is the act of the plaintiff herein.

14. For its answer to paragraph 14 of said bill of complaint, this defendant denies that the said agreement or indenture of lease is or ever was in any respect whatever null or void, and denies that its execution was pretended or was effected without authority of law, but on the contrary alleges that the execution thereof was duly and fully authorized by the laws of the United States then in force.

15. For its answer to paragraph 15 of said bill of complaint, this defendant admits that a certain contract or agreement was made and executed February 9, 1923, as supplemental to and pursuant to said agreement "Exhibit B," and that a true copy of said supplemental agreement is attached to and made a part of said bill of complaint marked
69 "Exhibit C" and that the said supplemental agreement was for the construction of government storage tankage and facilities designated for convenience in said supplemental agreement as "Projects A, B, C, and D"; admits that the said supplemental agreement was made without advertisement or competitive bidding but denies that the same was for that reason or for any other reason fraudulent, illegal, null or void. And defendant alleges that the government storage tankage and facilities covered by said supplemental agreement were to be constructed for the United States Navy as provided therein.

16. For its answer to paragraph 16 of said bill of complaint, this defendant admits that it entered into possession of the lands described in the bill of complaint under said contract, "Exhibit B," and explored and drilled for petroleum or crude oil and began the receipt of oil from the wells so drilled, and has thence up till the time of the filing of the said bill of complaint taken oil from said lands pursuant to

said agreement and that unless restrained therefrom it would have continued so to explore and drill for petroleum or crude oil and to take oil from the said property, and defendant denies that the said exploration or drilling or taking was or would have been to the great or continuing loss or damage of plaintiff, and defendant denies that it has trespassed upon the said lands or any of them or that it had any intention of trespassing thereon or continuing to trespass thereon.

70 Defendant admits that it has issued certificates as in said agreement provided and has delivered the same to the proper officers of the United States, but denies that said certificates or any of them, have been used in payment for construction work done by said defendant either pursuant to the terms of said agreement and said supplemental agreement or otherwise. Defendant alleges that it has expended in its operations pursuant to said agreement or indenture of lease upon the lands described therein and in the development of said properties a large sum of money, to-wit, more than $5,000,000, which sum has gone to the benefit of said premises and of the plaintiff and has been expended by this defendant in good faith in the carrying out of the provisions and obligations of said agreement or indenture of lease and has acted in that regard upon the advice of counsel that said agreement and indenture of lease was and is valid and binding upon the parties thereto, and that said operations and development have been highly beneficial to the plaintiff through the carrying out by this defendant of the stipulations and provisions in favor of the plaintiff as reserved in its favor and contained in the said agreement or indenture of lease, and have been highly beneficial to said premises and have enhanced the value thereof more than $5,000,000. And defendant alleges that it has not taken and has not intended to take any oil from the lands described in said agreement or indenture of lease save and except in pursuance of

71 the terms of said agreement, and defendant alleges that instead of trespassing upon said lands, each and every of its acts upon said lands, and each and every act intended by this defendant upon or in relation to said lands was fully authorized by the said agreement or indenture of lease. And defendant alleges that any and all certificates issued as in said agreement provided and delivered to the proper officers of the United States have been issued and delivered to the plaintiff herein for the purposes and under the provisions of said agreement or indenture of lease and said supplemental agreement and not otherwise.

17. And for its answer to paragraph 17 of said bill of complaint, this defendant denies that any construction of oil storage facilities for the United States was without warrant or authority of law, but alleges that all of the said construction, whether done by this defendant or another, has proceeded under the authority and direction of the Secretary of the Navy of the United States and that the same was duly and fully authorized by law. And defendant denies that payment has been made either in oil certificates or otherwise, for the said construction, or any part thereof. Defendant alleges that pursuant to said supplemental agreement "Exhibit C" it has proceeded through a nominee, to-wit, Sinclair Refining Company, a corporation of the State of Maine, with the construction of oil storage facilities for the Navy of the United States, to-wit, "Project A" designated in said supplemental agreement "Exhibit C"; that pursuant thereto this defendant had, prior to the commencement of this
72 action, through its nominee, Sinclair Refining Company, performed work and labor and completed over 90% of the construction of "Project A" designated in said supplemental agreement "Exhibit C" at a total cost and expense to this defendant or its said nominee of more than $1,000,000; that said work was performed pursuant to the terms of said supplemental agreement, "Exhibit C," upon plans and specifications and under direct supervision and inspection of the plaintiff herein; that said construction work was done upon premises owned by the plaintiff and that the same was done at the actual cost thereof without any profit whatsoever to the defendant herein or its said nominee, and that said facilities so constructed are of the reasonable value of $1,000,000, and the property of the plaintiff has by reason of said construction been enhanced in value to the extent of not less than $1,000,000; that said construction work was done at the request and instance of the plaintiff and its authorized agents and that all work completed was duly approved and certified to have been constructed, done and delivered in accordance with the terms of said supplemental agreement marked "Exhibit C" and that the plaintiff is now vested with the title to said improvements; that said expense was incurred and said improvements constructed upon the premises of the plaintiff in good faith by this defendant acting through its said nominee, and upon the advice of counsel to the effect that said supplemental agreement was valid
73 and binding upon the parties thereto. Defendant further alleges that at the time of the commencement of this action it was through its said nominee and still is duly

continuing the performance of all the obligations upon it by the said supplemental agreement, "Exhibit C," and subject to the conditions thereof, and that it has been and is ready and willing to continue and complete performance of each and every of the said obligations as provided in said supplemental agreement "Exhibit C."

18. For its answer to paragraph 18 of said bill of complaint, this defendant denies that said Harry F. Sinclair, or any other person, either acting for or on behalf of this defendant, or otherwise, either at or about the commencement of the year 1922, or any other time, did combine, conspire, or confederate with the said Albert B. Fall or any other person or persons to defraud the United States of America, either by the execution of a lease on lands specified in paragraph 4 unto the said Harry F. Sinclair or a company or corporation to be named by him, or otherwise; and denies that the said Harry F. Sinclair, or any other person acting for this defendant, did or performed any act whatever, either any of those enumerated in the said bill of complaint or any other act in consummation of any such conspiracy or for any purpose of any such conspiracy, and denies that said Albert B. Fall did or performed any act whatever, either any of those enumerated in the said bill of complaint or any other
74 act in consummation of any such conspiracy or for any purpose of any such conspiracy; and denies that the agreement or lease alleged in said bill of complaint was executed or delivered in consummation of any such conspiracy or any conspiracy, or for any purpose of any such conspiracy, or for any purpose in any wise of defrauding the United States of America.

19. For its answer to paragraph 19 of said bill of complaint, this defendant denies that negotiations preliminary to said agreement were conducted on behalf of the United States of America by said Albert B. Fall, purporting to act in that behalf under the provisions of the Executive Order mentioned in paragraph 9 hereof, and defendant alleges that the negotiations preliminary to said agreement were conducted on behalf of the United States of America by Edwin Denby, Secretary of the Navy, and that in connection with such negotiations, the said Edwin Denby, Secretary of the Navy, made use of the services of officers of the United States Navy and of Albert B. Fall, Secretary of the Interior, and of certain of the bureaus and personnel of the Department of the Interior of the United States, and defendant alleges that all negotiations preliminary to said agreement were conducted

under the supervision and control of the Secretary of the Navy, and defendant alleges that it was proper and lawful for the Secretary of the Navy to so conduct said negotiations preliminary to said agreement.

75 20. For its answer to paragraph 20 of said bill of complaint, this defendant denies that the negotiation or conclusion of said agreement was a private or secret negotiation or agreement between said Albert B. Fall and Harry F. Sinclair, President of this defendant, or any other person acting for it or on its behalf, or was in any wise a private or secret negotiation.

21. For its answer to paragraph 21 of said bill of complaint, this defendant admits that said contract "Exhibit B," was awarded without advertisement but denies that it was awarded without competitive bidding, and denies that said contract, "Exhibit B," was awarded in contravention of any statute of the United States. Defendant admits that the construction work done under the said contract and said supplemental agreement "Exhibit C," was done without advertisement, but denies that said work was done without competitive bidding, and denies that such work was done in contravention of any statute of the United States. And defendant denies that any oil belonging to the United States was by the terms of said agreement "Exhibit B," sold and delivered to this defendant, either without advertisement, without competitive bidding or otherwise. And defendant denies that either of said contracts was or is illegal, null or void, or without the power of the officers of the United States who executed the same to make the same, or without authority in law.

22 For its answer to paragraph 22 of said bill of complaint, this defendant denies that Edwin Denby, Sec-
76 retary of the Navy of the United States, was without part in the negotiation of said agreement, "Exhibit B," and denies that he failed to exercise his discretion with regard thereto or to the terms thereof, and denies that he affixed his signature thereto merely in a colorable attempt to evidence the compliance by him in its terms, or an exercise of discretion in connection with its making, and defendant makes the same denials concerning the contract, "Exhibit C," as are above made in reference to "Exhibit B." And this defendant alleges that the said Edwin Denby, Secretary of the Navy of the United States, as such Secretary negotiated said agreement "Exhibit B" and said agreement "Exhibit C," and affixed his signature thereto and executed the

same, all in the full exercise of the discretion vested in him by law in connection therewith.

23. For its answer to paragraph 23 of said bill of complaint, this defendant admits, on information and belief, that the oil companies or persons mentioned in said paragraph, or some of them, and others were desirous of obtaining a lease or leases upon some or all of the lands described in paragraph 4 of said bill of complaint, but if any person or company was denied an opportunity to obtain any such lease or leases or discouraged from bidding or becoming a competitor with this defendant for obtaining such a lease or agreement by any act or omission of said Albert B. Fall, this defendant has no knowledge thereof; and this defendant denies that it had any knowledge whatever that the said Al-
77 bert B. Fall, either as Secretary of the Interior or otherwise, was withholding from any other person or company any opportunity to bid or to become a competitor for the lease of said lands, or any part thereof, described in paragraph 4 of said bill of complaint, and denies that the said Harry F. Sinclair or any other person on behalf of this defendant, was conspiring with the said Albert B. Fall to that end.

24. For its answer to paragraph 24 of said bill of complaint, this defendant alleges that if the said Albert B. Fall steadfastly or otherwise refused to take the opinion of the Solicitor of the Department of the Interior of the United States or of the Attorney General of the United States concerning the legality of such a lease, as alleged by the plaintiff, this defendant has no knowledge thereof.

25. For its answer to paragraph 25 of said bill of complaint, this defendant denies that said Albert B. Fall communicated secretly or otherwise to the said Harry F. Sinclair, or to any other person acting for this defendant, that he would not make any lease upon the lands described in said agreement unless or until the said Harry F. Sinclair produced to him a quitclaim deed for all mining claims asserted by any parties to any portion of the lands embraced within the said agreement. Defendant admits and alleges that the said Albert B. Fall openly communicated to the said Harry F. Sinclair that no lease upon the lands described in paragraph 4 of said bill of complaint would be made by the United States of America unless there should be delivered to the
78 United States quitclaim deeds covering the interest of any and all parties who at that time had pending any

claims or applications for permits or leases under the provisions of an Act of Congress of February 25, 1920, entitled, "An Act to provide for the mining of coal, phosphate, oil, oil shale, gas and sodium upon the public domain," or had pending applications for United States patent under any law, but denies that any other or further requirement was made as to mining claims. If said Albert B. Fall then knew that any mining claim asserted by any party to any portion of the lands embraced within the said agreement, "Exhibit B," was worthless, or himself expressed that belief, this defendant has no knowledge thereof. And this defendant denies that there was any connivance whatsoever between the said Albert B. Fall and the said Harry F. Sinclair, or between the said Albert B. Fall and any other person acting for this defendant with reference to procuring any quitclaim deed, either before the execution of "Exhibit B" or at any other time. This defendant admits and alleges that said Harry F. Sinclair and others acting for this defendant, and other persons or companies interested in securing a lease covering the lands described in paragraph 4 of said bill of complaint were informed that the United States of America required the delivery to it of a quitclaim deed or quitclaim deeds covering the interest of any and all parties who at that time had pending any claims or applications for permits or leases under
79 the provisions of said Act of Congress of February 25, 1920, or who had pending applications for United States patent under any law, before a lease covering the lands described in paragraph 4 of said bill of complaint would be made, and this defendant alleges that it procured a quitclaim deed or quitclaim deeds covering all such interests or claims, but denies that any interest or claim so procured by it was known to it or to anyone acting in its behalf to be valueless, and if any such interest or claim was known by anyone other than this defendant or anyone acting in behalf of this defendant, at the time of its procurement by this defendant, to be valueless, this defendant has no knowledge thereof. And defendant alleges that the same requirement as to procuring quitclaim deeds was communicated not only to those acting for this defendant at the time and times when they sought leases for the said premises, but was likewise communicated to the other persons and companies interested in obtaining such a lease at the time and times when they sought such leases, and that there was no preference given to this defendant or to those acting on its behalf in the matter of

obtaining knowledge of such requirement; and defendant denies that in the matter of such requirement, or in the matter of its communication the said Albert B. Fall or any other person acted fraudulently or with intent to stifle competition, or with full knowledge or any knowledge that any quitclaim deed or deeds had been obtained by this defendant, or by said Harry F. Sinclair, or by any other person or persons acting on its behalf; and denies that the said requirement was made subsequent to the time when the quit claim deeds to this defendant were obtained. And this defendant avers that the said quitclaim deeds to this defendant were tentative and conditional in character, and to be force and effect only in case this defendant obtained a lease or leases upon the lands covered by the quitclaim deeds. And defendant denies that the obtaining of any such quitclaim deed or deeds was made a condition precedent to the obtaining of a lease or leases upon the said lands, or any of them, at any time when any such condition imposed had been made impossible of performance, and denies that the said condition precedent, or any condition was made fraudulently or secretly.

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26. For its answer to paragraph 26 of said bill of complaint, this defendant alleges that if said Albert B. Fall agreed with one Shaffer that he would see that said Harry F. Sinclair, or this defendant, should set apart certain of said leased lands for the benefit of said Shaffer, this defendant has no knowledge thereof, and this defendant denies that said Albert B. Fall did arrange with said Harry F. Sinclair, or any other person, that as a condition of receiving said lease, he the said Harry F. Sinclair, or this defendant, should so set apart lands for the said Shaffer out of the leased lands, and this defendant denies that either the said Harry F. Sinclair or this defendant, either in accordance with such alleged agreement or understanding with the said Albert B. Fall or otherwise, did set aside any of said lands for the said Shaffer.

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27. For its answer to paragraph 27 of said bill of complaint, this defendant denies that said Albert B. Fall did at any time fraudulently or covinously or otherwise cause any information concerning the making of said agreement, to be kept secret or concealed from his associates, or from the Congress of the United States, or from the public, and alleges that if he did conceal or keep secret such information this defendant is without knowledge thereof.

28. For its answer to paragraph 28 of said bill of complaint, this defendant denies that the said Albert B. Fall and

said Harry F. Sinclair or any other person, acting for or on behalf of this defendant, in negotiating or concluding said agreement, did fraudulently or covinously combine, confederate, or conspire, either in the manner or by the alleged acts set forth in the bill of complaint or otherwise to defraud the United States of America, either

(a) By granting said lease upon said naval petroleum lands in violation of law; or

(b) To favor and prefer this defendant over and above other persons desirous of taking a lease upon said lands: or

(c) To insure to this defendant the valuable right to receive and take to exhaustion the oil and gas which might be obtained from said lands in said agreement mentioned; or

(d) To lease the said lands to this defendant by said agreement at an inadequate, improper or fraudulent consideration;

82 And this defendant denies that there was any purpose to cause the said lease to be granted upon said naval petroleum lands in any wise that would constitute a violation of law; and defendant denies that this defendant was favored or preferred over and above any other person or persons desirous of taking a lease upon said lands; and denies that there was ever any purpose on the part of any one who acted for the United States to make sure to this defendant the right to receive the oil or gas which might be obtained from said lands, but on the contrary avers that there was every purpose to cause the said lands to be leased to such bidder or bidders as would operate the same under terms most favorable to the United States without preference; and denies that there was any purpose that the consideration for the lease of the said lands either to this defendant or to any other company or person should be on any terms that were in any wise inadequate or improper or for any fraudulent consideration; and this defendant avers that in truth and in fact the consideration to the United States for the lease of the said lands as reserved in the said lease, was and is fully adequate and proper.

29. For its answer to paragraph 29 of said bill of complaint, this defendant denies that said agreement "Exhibit B" or said agreement, "Exhibit C," was or is fraudulent, illegal, null or void, or of no force or validity against the United States of America by reason of the alleged matters

and things set forth in said bill of complaint or by
83 any other reason whatsoever, but avers and alleges that both said agreements were fully authorized by the laws of the United States then in force.

30. For its answer to paragraph 30 of said bill of complaint, this defendant admits that said agreement, "Exhibit B," constitutes a lien and encumbrance upon the title of the plaintiff to the said lands, but denies that the same is a cloud upon the said title of the plaintiff, and denies that the plaintiff is entitled to have the same removed.

31. For its answer to paragraph 31 of said bill of complaint, this defendant denies that it ever trespassed upon the said lands, but on the contrary alleges that all its acts upon and in relation to the said lands have been fully authorized by the said agreement "Exhibit B," and defendant denies that it should be caused to deliver up the said agreement to be cancelled. And defendant alleges that it has at all times made full and complete disclosure to the plaintiff of all that it has received under the said lease, and has at all times made a full, true and accurate accounting of all the oil received by it under the terms of said agreement and of all matters and things and all items of accounting showing its transactions under said agreement from the date of the making thereof, all in accordance with the terms of said agreement, and it further shows that it is at all times ready and willing to make such full accounting and showing in accordance with the terms of said agreement. And further for its answer
84 hereto, and without admitting any of the allegations of the plaintiff's bill not herein otherwise expressly admitted and reaffirming all its denials herein made, defendant alleges that in case the prayer of the plaintiff's bill should be granted, the defendant would be entitled on such an accounting to credit for the amount of money which it has spent on the betterment of the properties covered by said lease, "Exhibit B," and for the obligations which it has become required to pay thereunder, which are referred to in paragraph 16 hereof, and for the amount of money which it or its nominee has spent as required by the construction contract, "Exhibit C," and for the obligations which it or its nominee has become required to pay thereunder, which are referred to in paragraph 17 hereof. And the defendant alleges and here sets up that in such case it would be entitled to counterclaim for such amounts and obligations against the plaintiff and would be so entitled to credit for such amounts and obligations on such accounting and that no decree should

be made in such case granting the prayer of the plaintiff's bill except on condition that the defendant be paid all such amounts which it has so expended and all such obligations for which it has so become liable.

32. For its answer to paragraph 32 of said bill of complaint, this defendant admits that the defendant Sinclair Crude Oil Purchasing Company claims to have and to hold certain rights derived from this defendant, and claims to have erected and maintained certain structures upon
85 the lands described in the bill of complaint, but denies that said Sinclair Crude Oil Purchasing Company is a trespasser upon said lands.

33. For its answer to paragraph 33 of said bill of complaint, this defendant admits that the defendant Sinclair Pipe Line Company claims to have and to hold certain rights derived from this defendant and that it has erected and maintained certain structures upon the lands described in the bill of complaint, but this defendant denies that the said Sinclair Pipe Line Company is a trespasser upon said lands.

Wherefore, this defendant prays that the plaintiff take nothing upon its bill of complaint herein, and that the defendant be hence dismissed without day, and for all other proper relief.

R. W. RAGLAND,
G. T. STANDFORD,
J. W. ZEVELY,
MARTIN W. LITTLETON,
PAUL D. CRAVATH,
HERBERT V. LACEY,
JOHN W. LACEY,
Attorneys for defendant Mammoth Oil Company.

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86 Answer of Defendant, Sinclair Crude Oil Purchasing Company

Now comes the above named defendant, Sinclair Crude Oil Purchasing Company, and for its answer to the bill of complaint of the above named plaintiff filed herein, alleges and says:

1.

For its answer to the first paragraph of said bill this defendant admits the allegations therein contained and set forth.

2.

For its answer to the second paragraph of said bill this defendant admits the allegations therein set forth.

3.

For its answer to the third paragraph of said bill this defendant admits all the allegations therein set forth, with the exception that it denies that the above named defendant, Sinclair Pipe Line Company, is doing business within the State of Wyoming, but admits that said defendant owns property situated in said state.

87

4.

For its answer to the fourth paragraph of said bill this defendant admits that said complainant was, at all times mentioned in said bill, and is now, the owner of the land described in said fourth paragraph, and admits that said land was part of the unappropriated lands of the Public Domain of the United States of America, but denies that said plaintiff was and is the owner in fee simple of said land, but alleges that said ownership of said plaintiff is subject to the oil and gas mining lease executed to Mammoth Oil Company; a copy of which lease is attached to said bill as "Exhibit B".

5.

This defendant for its answer to the fifth paragraph of said bill admits all the allegations therein contained and set forth.

6.

For its answer to the sixth paragraph of said bill this defendant admits all allegations therein contained and set forth.

7.

For its answer to the seventh paragraph of said bill this defendant admits all allegations therein contained and set forth.

8.

For answer to the eighth paragraph of said bill this defendant admits all allegations therein contained and set forth.

9.

For answer to the ninth paragraph of said bill this defendant admits all the allegations therein contained and set forth.

88

10.

This defendant for its answer to the tenth paragraph of said bill denies that said order was invalid, illegal, and of no force or virtue in law, and denies that said order was known so to be by Albert B. Fall and by the defendant, Mammoth Oil Company, at the time of the procurement of the execution of said order, as alleged in said paragraph.

11.

This defendant for its answer to the allegations contained in the eleventh paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

12.

This defendant for its answer to the allegations contained in the twelfth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

13.

This defendant for its answer to the thirteenth paragraph of said bill admits that on April 7, 1922, Albert B. Fall, as Secretary of the Interior, and Edwin Denby, as Secretary of the Navy, executed and delivered unto the above named defendant, Mammoth Oil Company, the oil and gas mining lease covering the lands described in said bill, and admits that a true copy is attached to said bill and marked "Exhibit B"; but this defendant states that it has no knowledge as to whether said Albert B. Fall and Edwin Denby acted in pursuance of and reliance upon the said executive order mentioned in said paragraph.

14.

This defendant for its answer to the allegations in paragraph fourteenth of said bill denies that said oil and gas mining lease is null and void, and denies that it was executed without authority of law.

89

15.

This defendant for its answer to the allegations contained in the fifteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

16.

This defendant for its answer to paragraph sixteenth of said bill admits that said defendant, Mammoth Oil Company, under and by virtue of said oil and gas mining lease contract

of April 7, 1922, went into possession of the lands described therein and explored and drilled for petroleum or crude oil thereon, and produced oil from the wells so drilled by it thereon; but this defendant states that it is without knowledge of the other facts and allegations therein set forth.

17.

This defendant for its answer to the allegations contained in the seventeenth paragraph of said bill, states that it is without knowledge of the facts and allegations therein set forth.

18.

This defendant for its answer to the allegations contained in the eighteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

19.

This defendant for its answer to the allegations contained in the nineteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

20.

This defendant for its answer to the allegations contained in the twentieth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

90

21

This defendant for its answer to the twenty first paragraph of said bill states that it has no knowledge as to the allegations contained in the first sudivision of said paragraph twenty-first; this defendant denies that said oil and gas mining lease contract of April 7, 1922, was illegal, null and void, and without the power of the officers of the United States who executed the same to execute said lease, and denies that said lease was executed wholly without authority in law.

22.

This defendant for its answer to the allegations contained in the twenty-second paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

23.

This defendant for its answer to the allegations contained in the twenty-third paragraph of said bill states that it is

without knowledge of the facts and allegations therein set forth.

24.

This defendant for its answer to the allegations contained in the twenty-fourth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

25.

This defendant for its answer to the allegations contained in the twenty-fifth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

26.

This defendant for its answer to the allegations contained in the twenty-sixth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

91

27.

This defendant for its answer to the allegations contained in the twenty-seventh paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

28.

This defendant for its answer to the allegations contained in the twenty-eighth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

29.

This defendant for its answer to the twenty-ninth paragraph of said bill denies that said oil and gas mining lease contract of April 7, 1922, was illegal, null and void, and of no force or validity as against the United States of America, but states that it has no knowledge as to the other allegations and facts contained in said paragraph.

30.

This defendant for its answer to the allegations contained in the thirtieth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

31.

This defendant for its answer to the allegations contained in the thirty-first paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

32.

This defendant for its answer to the allegations contained in the thirty-second paragraph of said bill admits that it holds certain rights and interests in the land described in said bill, which were partly derived from said defendant, Mam-
92 moth Oil Company, and admits that this defendant has erected and now maintains certain structures, which are more specifically hereinafter described herein, upon a portion of the land described in paragraph fourth of said bill; but this defendant denies that it is a trespasser upon said land for the reasons hereinafter set forth herein.

33.

This defendant for its answer to the allegations contained in the thirty-third paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

34.

This defendant, for a separate and further defense herein, alleges and says:

(a) That by virtue of the terms of said oil and gas mining lease contract of April 7, 1922, said defendant, Mammoth Oil Company, was expressly granted the right to construct and maintain upon the land therein described all buildings, plants, tanks, tank farms, pipe lines and pumping stations or other structures necessary to the development and operation of said property therein described for oil and gas mining purposes, and said defendant, Mammoth Oil Company, in order to store and hold the oil that was produced from the wells which it drilled thereon, contracted for the construction of a number of steel oil storage tanks to be used for the storage of said oil, and this defendant, during the month of January 1923 purchased from said Mammoth Oil Company all of its steel oil storage tanks then erected or building upon said land and assumed the performance of the contract theretofore entered into by said Mammoth Oil Company for the construction of said tanks and duly paid to said Mammoth Oil Company the consideration agreed upon therefor, and assumed and paid to the tank construction company the balance that thereafter became due it for the erection and construction of the oil storage tanks on said land and fire
93 walls and guards around the same; that this defendant, in purchasing said tanks from said defendant, Mammoth Oil Company, and in completing the erection and construction thereof and in making the expenditures neces-

sary therefor, relied upon the validity of said oil and gas mining lease contract of April 7, 1922, and further relied upon the fact that by virtue of the terms thereof said defendant, Mammoth Oil Company, had the right to erect or cause said tanks to be erected and maintained on the premises in controversy herein, and as a result thereof this defendant became and is now the owner of the seventeen (17) steel oil storage tanks, and contents thereof, located upon portions of Sections Twenty-seven (27) and Thirty-four (34), Township Thirty-nine (39) North, Range Seventy-eight (78) West, described in the bill of said plaintiff, being more specifically described and numbered as follows:

Tanks Numbered 2004, 2005, 2006, 2007, 2008 and 2009, all located upon the South Half ($S\frac{1}{2}$) of said Section 27;

Tank Numbered 2012, located upon the South boundary line of said South Half ($S\frac{1}{2}$) of said Section 27;

Tanks Numbered 2010, 2011, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020, all being upon the East Half ($E\frac{1}{2}$) of said Section 34;

Each and all of said tanks being of a capacity of eighty thousand (80,000) barrels of crude oil.

(b) That in order to conserve the oil produced from the wells upon said land, when and as produced, it was necessary for said defendant, Mammoth Oil Company, to cause said tanks to be erected, as it was given the right to do under the terms of said oil and gas mining lease contract of April 7, 1922, and that by the sale and transfer of all of its right, title and interest in and to said tanks, this defendant became the owner thereof, and, as the licensee of said Mammoth Oil Company, entitled to maintain the same where located, in all respects as said Mammoth Oil Company was entitled to do.

94 (c) That said tanks so owned by this defendant have been used for the storage not only of the oil purchased by this defendant from Mammoth Oil Company which was produced from the land described in said bill, but also for the storage of royalty oil purchased by this defendant from the United States Government, which was produced upon leases on government lands in the Salt Creek field in the vicinity of the lands described in said bill, said storage being used for the purpose of storing said oil awaiting the completion of the pipe line being constructed by Sinclair Pipe Line Company for transportation therein from said tanks to the market

when said pipe line is finally completed and ready to transport oil therein.

Wherefore, this defendant prays that the bill of said plaintiff be dismissed as to it, and for such other and further relief as may be equitable and just.

EDW. H. CHANDLER
RALPH W. GARRETT
Attorneys for Defendant, Sinclair Crude Oil Purchasing Company.

Endorsed: Filed in the District Court on April 10, 1924.

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95 Answer of Defendant, Sinclair Pipe Line Company.

Now comes the above named defendant, Sinclair Pipe Line Company and for its answer to the bill of complaint of the above named plaintiff filed herein, alleges and says:

1.

For its answer to the first paragraph of said bill this defendant admits the allegations therein contained and set forth.

2.

For its answer to the second paragraph of said bill this defendant admits the allegations therein set forth.

3.

For its answer to the third paragraph of said bill this defendant admits all the allegations therein set forth, with the exception that it denies that it is doing business within the State of Wyoming, but admits that it owns property situated in said state.

96

4.

For its answer to the fourth paragraph of said bill this defendant admits that said complainant was, at all times mentioned in said bill, and is now, the owner of the land described in said fourth paragraph, and admits that said land was part of the unappropriated lands of the Public Domain of the United States of America, but denies that said plaintiff was and is the owner in fee simple of said land, but alleges that said ownership of said plaintiff is subject to the oil and gas mining lease executed to Mammoth Oil Company; a copy of which lease is attached to said bill as "Exhibit B".

5.

This defendant for its answer to the fifth paragraph of said bill admits all the allegations therein contained and set forth.

6.

For its answer to the sixth paragraph of said bill this defendant admits all allegations therein contained and set forth.

7.

For its answer to the seventh paragraph of said bill this defendant admits all allegations therein contained and set forth.

8.

For answer to the eighth paragraph of said bill this defendant admits all allegations therein contained and set forth.

9.

For its answer to the ninth paragraph of said bill this defendant admits all allegations therein contained and set forth.

97 10.

This defendant for its answer to the tenth paragraph of said bill denies that said order was invalid, illegal, and of no force or virtue in law, and denies that said order was known so to be by Albert B. Fall and by the defendant, Mammoth Oil Company, at the time of the procurement of the execution of said order, as alleged in said paragraph.

11.

This defendant for its answer to the allegations contained in the eleventh paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

12.

This defendant for its answer to the allegations contained in the twelfth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

13.

This defendant for its answer to the tenth paragraph of said bill admits that on April 7, 1922, Albert B. Fall, as Secretary of the Interior, and Edwin Denby, as Secretary of the Navy, executed and delivered unto the above named de-

fendant, Mammoth Oil Company, the oil and gas mining lease covering the lands described in said bill, and admits that a true copy is attached to said bill and marked "Exhibit B"; but this defendant states that it has no knowledge as to whether said Albert B. Fall and Edwin Denby acted in pursuance of and reliance upon the said executive order mentioned in said paragraph.

14.

This defendant for its answer to the allegations in paragraph fourteenth of said bill denies that said oil and gas mining lease is null and void, and denies that it was executed without authority of law.

15.

This defendant for its answer to the allegations contained in the fifteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

16.

This defendant for its answer to paragraph sixteenth of said bill, admits that said defendant, Mammoth Oil Company, under and by virtue of said oil and gas mining lease entered on April 7, 1922, went into possession of the land described therein and explored and drilled for petroleum or crude oil thereon, and produced oil from the wells so drilled in it thereon; but this defendant states that it is without knowledge of the other facts and allegations therein set forth.

17.

This defendant for its answer to the allegations contained in the seventeenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

18.

This defendant for its answer to the allegations contained in the eighteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

19.

This defendant for its answer to the allegations contained in the nineteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

20.

This defendant, for its answer to the allegations contained in the twentieth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

21.

This defendant for its answer to the twenty-first paragraph of said bill states that it has no knowledge as to the allegations contained in the first subdivision of said paragraph twenty-first; this defendant denies that said oil and gas mining lease contract of April 7, 1922, was illegal, null and void, and without the power of the officers of the United States who executed the same to execute said lease, and denies that said lease was executed wholly without authority of law.

22.

This defendant for its answer to the allegations contained in the twenty-second paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

23.

This defendant for its answer to the allegations contained in the twenty-third paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

24.

This defendant for its answer to the allegations contained in the twenty-fourth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

25.

This defendant for its answer to the allegations contained in the twenty-fifth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

26.

This defendant for its answer to the allegations contained in the twenty-sixth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

27.

This defendant for its answer to the allegations contained in the twenty-seventh paragraph of said bill states

that it is without knowledge of the facts and allegations therein set forth.

28.

This defendant for its answer to the allegations contained in the twenty-eighth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

29.

This defendant for its answer to the twenty-ninth paragraph of said bill denies that said oil and gas mining lease contract of April 7, 1922, was illegal, null and void, and of no force or validity as against the United States of America, but states that it has no knowledge as to the other allegations and facts contained in said paragraph.

30.

This defendant for its answer to the allegations contained in the thirteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

31.

This defendant for its answer to the allegations contained in the thirty-first paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

32.

This defendant for its answer to the allegations contained in the thirty second paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

33.

This defendant for its answer to the thirty-third paragraph of said bill admits that it holds and is entitled to certain rights and interests in the land described in said bill, which were partly derived from said defendant, Mammoth Oil Company, and admits that this defendant has erected and now maintains certain structures, which are more specifically hereinafter described herein, upon and across the lands described in paragraph fourth of said bill, but this defendant denies that it is a trespasser upon said lands for the reasons hereinafter set forth herein.

34.

This defendant, for a separate and further defense herein, alleges and says:

(a) That on the 20th day of December, 1922, said plaintiff, the United States of America, acting on its behalf by said Albert B. Fall, then Secretary of the Interior, and said Edwin Denby, then Secretary of the Navy, together with Mammoth Oil Company, by its duly authorized Vice President and Secretary, together with this defendant, acting by and through its duly authorized President, J. R. Manion, and one of its Assistant Secretaries, A. Steinmetz, duly executed and delivered unto each other a contract in writing, by the terms of which said defendant, Mammoth Oil Company, did designate this defendant as its nominee to build and construct the pipe line required to be built and constructed by virtue of the terms and provisions of said oil and gas mining lease contract of April 7, 1922, hereinbefore mentioned; which pipe line so required to be constructed by said defendant, Mammoth Oil Company, or its nominee, was to be of a capacity of twenty five thousand (25,000) barrels daily, and extending from the lands described in the fourth paragraph of said bill to a point or connection on the main pipe line then operated by this defendant or the main pipe line then operated by The Prairie Pipe Line Company, extending from the Mid Continent field in Oklahoma, Kansas and
102 Northern Texas to Chicago, Illinois, but from which obligation said Mammoth Oil Company was not discharged until completion of said pipe line above mentioned; and by the further terms of said contract of December 20, 1922, this defendant agreed to build and construct, or cause to be built and constructed, a pipe line as provided for in said oil and gas mining lease contract of April 7, 1922, except that said pipe line should have a capacity of forty thousand barrels (40,000) per day during the summer months instead of twenty five thousand (25,000) barrels per day, as in said oil and gas mining lease contract provided; and it was further required of this defendant that actual operations for the construction of said pipe line should commence within sixty days from the date of said agreement, and that said pipe line when constructed, should be operated and maintained by this defendant in accordance with all the terms and provisions of the oil and gas mining lease contract of April 7, 1922, in so far as the same were applicable to the construction and operation of said pipe line.

It was further provided by the terms of said agreement of December 20, 1922, that said plaintiff, acting by said Secretary of the Interior and Secretary of the Navy, agreed to accept this defendant as the nominee of said Mammoth Oil Company for the construction of said pipe line provided for in said oil and gas mining lease contract of April 7, 1922; and further agreed that the construction of said pipe line by this defendant, as such nominee, as in said oil and gas mining lease contract provided, should be deemed a compliance by said Mammoth Oil Company of its obligation to construct said pipe line, as in said oil and gas mining lease contract of April 7, 1922 provided; a true and correct copy of said written agreement of December 20, 1922, is hereto attached and hereby made a part hereof, as though set forth at length herein, and marked "Exhibit A"

103 (b) That immediately after the execution and delivery of said written contract or agreement of December 20, 1922, and within sixty (60) days from the date thereof, this defendant, in strict performance of the terms and obligations thereof, commenced the building and construction of the pipe line described in said agreement, and the pump stations, tanks and necessary equipment and appurtenances thereto, of sufficient size to have a capacity of forty thousand (40,000) barrels per day during the summer months, and ever since said time has continued the work of constructing and building said pipe line and equipment to be used in the operation of the same, extending from the lands described in said agreement, being the same lands described in the bill of said plaintiff, to a point or connection on the main pipe line owned and operated by this defendant near Freeman, Missouri, which is a station on the main pipe line of this defendant extending from the Mid Continent field in Oklahoma, Kansas and Northern Texas, to Chicago, Illinois, and at the time this answer is filed, said pipe line will be so nearing completion, together with the pump stations, tanks and equipment used or to be used in the operation thereof, that it should be fully completed within ninety (90) days from the date of the filing of this answer.

(c) That this defendant, relying upon the validity of said oil and gas mining lease contract of April 7, 1922, entered into said agreement of December 20, 1922, as aforesaid, and relying upon the validity of both of said agreements and contracts, undertook to strictly perform the covenants and obligations imposed upon it by its said agreement of December 20, 1922, as aforesaid, and by virtue thereof, has hereto

fore expended or will expend, by the time said pipe line, equipment and appurtenances thereto are finally completed for full operation thereof, an amount in excess of eigh-
104 teen million dollars ($18,000,000.00) in the building and constructing of said pipe line, equipment and appurtenances, and as a part thereof, this defendant built its main pump station, together with the pumps and machinery located therein and used in connection therewith, bunk houses, warehouses, office, boiler house and reservoir, all upon a portion of the land described in the bill filed by the plaintiff herein, being upon the Northwest Quarter ($NW\frac{1}{4}$) of Section 27, T. 29 N., R. 78 W. therein described, and in addition thereto, this defendant constructed six (6) cottages upon the Northeast Quarter ($NE\frac{1}{4}$) of Section Twenty-eight (28), Township Thirty-nine (39) North, Range Seventy-eight (78) West, and near the northeast corner of said quarter section, being upon a part of the lands described in said bill, which cottages were erected by this defendant for the use of the employees operating said pump station and other equipment necessary to be used in the operation of said pipe line. That so relying upon both of said contracts, this defendant further constructed its main pipe line from its said main pump station located upon said Section 27 as aforesaid in a southerly direction across the land described in said bill, to be used for the transportation through said pipe line of the oil that might be tendered to this defendant for such transportation through said line to the connection with the main pipe line of this defendant extending from the Mid-Continent field to Chicago as aforesaid, and this defendant has expended, in the construction of said pump station, machinery, buildings, reservoir and main pipe line crossing said land described in said bill, in reliance upon its right so to do, under and by virtue of said contract of December 20, 1922, in excess of seven hundred thousand dollars ($700,000) therefor.

(d) That in addition to the other property hereinbefore described owned by this defendant and upon said land
105 described in said bill, this defendant is also the owner of four (4) steel oil storage tanks, two of which are numbered 832 and 833, respectively, each of fifty-five thousand (55,000) barrel capacity, and two tanks immediately south thereof, which are numbered 834 and 835 and are each sixty-four thousand (64,000) barrel capacity, all four (4) of said tanks being located upon the Northwest Quarter ($NW\frac{1}{4}$) of Section 27 hereinbefore described, being a part of the land described in the bill of said Plaintiff, which tanks

are used and are necessary to be used in the operation of said pump station and main pipe line of this defendant hereinbefore described.

Wherefore, this defendant prays that the bill of said plaintiff be dismissed as to this defendant, and for such other and further relief as may be equitable and just.

EDW. H. CHANDLER
RALPH W. GARRETT
Attorneys for Defendant
Sinclair Pipe Line Company.

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106 "Exhibit A"

This Agreement made and entered into this 20th day of December, 1922, by and between The United States of America, acting on this behalf by the Secretary of the Interior and the Secretary of the Navy, hereinafter referred to as the "Government", the Mammoth Oil Company, hereinafter referred to as "Mammoth" and Sinclair Pipe Line Company, hereinafter referred to as the "Pipe Line Company".

Witnesseth:

Whereas, under date of April 7th, 1922, the Government and Mammoth entered into a contract hereinafter referred to as the "Government Contract" whereby among other things, Mammoth agreed, to build, or cause to be built by its nominee, an oil pipe line of twenty-five thousand (25,000) barrels daily capacity extending from the lands described in Article I of said Government contract (being Naval Petroleum Reserve No. 3 Natrona County, Wyoming) to a point or connection on the main pipe line now operated by Sinclair Pipe Line Company or on the main pipe line now operated by Prairie Pipe Line Company extending from the mid-continent field to Chicago, Illinois, a copy of which said Government contract is hereto attached as Exhibit "A", and

Whereas Mammoth had designated the pipe line company as its nominee to build said oil pipe line or cause the same to be built by a subsidiary or controlled company of the Pipe Line Company, and

Whereas the Pipe Line Company has agreed as the nominee of Mammoth to assume the obligations of Mammoth in respect to said pipe line but said pipe line to have a capacity

of forty thousand (40,000) barrels per day during the summer months instead of twenty five thousand (25,000) barrels per day as in said Government contract provided.

Now, Therefore, for and in consideration of the mutual covenants and agreements hereinafter set forth to be performed by the respective parties hereto, the said parties hereto have covenanted, promised and agreed and do hereby covenant, promise and agree to and with each other as follows, to-wit:

107

I.

Mammoth hereby designates Sinclair Pipe Line Company or a subsidiary of or corporation controlled by Sinclair Pipe Line Company as its nominee to build the pipe line, the obligation for the construction of which Mammoth assumed in said Government Contract, and from which obligation Mammoth is not discharged until completion of the pipe line as herein described.

II.

Sinclair Pipe Line Company hereby agrees to build and construct, or cause to be built or constructed by a subsidiary of or a corporation controlled by said Pipe Line Company a pipe line as provided for in said Government Contract except that said pipe line shall have a capacity of forty thousand (40,000) barrels per day during the summer months instead of twenty-five thousand (25,000) barrels per day as in said Government contract provided; actual operations for the construction of said pipe line shall commence within sixty days from the date of this Agreement. Said pipe line when constructed shall be operated and maintained in accordance with all the terms and provisions of the Government Contract insofar as the same are applicable to the construction or operation of said pipe line.

It is understood that in the event of the organization by the Pipe Line Company of a subsidiary company to construct said pipe line, the entire capital stock of the new company will be owned by the Sinclair Pipe Line Company, one-half of whose stock is owned by Sinclair Consolidated Oil Corporation and the remainder by the Standard Oil Company, an Indiana corporation, except that some portion of the said stock of the new company, not in excess of one-third, may be sold to the Prairie Pipe Line Company.

108

III.

The United States of America, acting on this behalf by the Secretary of the Interior and the Secretary of the Navy

agrees to accept said Sinclair Pipe Line Company or a subsidiary of or corporation controlled by said Sinclair Pipe Line Company as the nominee of Mammoth for the construction of the pipe line provided for in said Government contract and further agrees that the construction of said pipe line by said nominee as in said Government Contract provided, shall be deemed a compliance by said the Mammoth Oil Company of its obligation to construct said pipe line as in said Government Contract provided.

In Witness Whereof the parties hereto have caused this agreement to be executed by their duly authorizd officers and agents.

(Seal) THE UNITED STATES OF AMERICA,
By Albert B. Fall,
Secretary of the Interior,
By Edwin Denby,
Secretary of the Navy.

Attest:

.....

(Seal) MAMMOTH OIL COMPANY,
By G. D. Wahlberg, Vice-President

Attest:
C. A. Lockard, Jr., Secretary.

(Seal) SINCLAIR PIPE LINE COMPANY,
By J. R. Manion, President.

Attest:
A. Steinmetz, Secretary.

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109 Exhibit A.

Senate

67th Congress,) (Document
2nd Session) (No. 196

Naval Reserve Oil Leases.

Letter

From

The Acting Secretary of the Interior,

Transmitting

In Response to Senate Resolution of April 15, 1922, a Copy of the Contract Between the Secretary of the Interior and

the Secretary of the Navy and the Mammoth Oil Co., Executed April 7, 1922.

April 20 (calendar day, April 29), 1922.—Ordered to lie on the table and to be printed.

Interior Department,
Washington, April 28, 1922.

Sir: Supplementing the joint report of the Secretary of the Navy and myself, dated April 21, 1922, in response to Senate Resolution 277, relating to naval petroleum reserve No. 3, Wyoming, I have the honor to transmit herewith a photostat copy of contract between the Secretary of the Interior, the Secretary of the Navy, and the Mammoth Oil Co., executed April 7, 1922.

Respectfull yours,

E. C. FINNEY, Acting Secretary.

The President of the Senate.

Whereas the Government of the United States is charged with the duty of securing and storing a supply of fuel oil for naval purposes, and is desirous of acquiring suitable storage for such fuel oil at points easily accessible to the United States Navy; and

Whereas the Government is desirous of avoiding in so far as possible any risks of loss of the supply of crude oil available for the United States Navy by a reduction of gas pressure resulting from the drilling and operating of wells located outside of Naval Reserve No. 3, Wyoming; and

Whereas the Government is desirous of creating a competitive market and securing the best prices obtainable for royalty oil received and to be received by the Government of the United States from the public domain in the Salt Creek field in Wyoming; and

Whereas the Government is desirous of exchanging crude oil that may be received by it as royalty from the said Naval Reserve No. 3, for fuel oil for the use of the United States Navy, and is desirous of securing adequate storage facilities for the storing of such fuel oil as is received by it in exchange for said crude oil over and above the requirements for use of the United States Navy;

Now, therefore, the Government of the United States, acting through the Secretary of the Interior, by and with the consent of the Secretary of the Navy proposes to secure the

objects hereinbefore set forth by entering into a contract of lease covering Naval Petroleum Reserve No. 3, prescribing the terms and conditions for the development and exploitation of the oil and gas within such naval reserve, and providing for the construction of a pipe line, among other things, to transport said oil from Naval Reserve No. 3 and for the transportation of royalty oil belonging to the Government and produced in Salt Creek field, Wyoming, should such transportation become necessary.

This indenture of lease entered into in triplicate this —— day of April, 1922, by and between the United States of America, acting in this behalf by the Secretary of the Interior of the United States, and the Secretary of the Navy of the United States, party of the first part, hereinafter called the lessor, and Mammoth Oil Co., a corporation of the State of Delaware, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved June 4, 1920, entitled "An act making appropriation for the naval service for the fiscal year ending June 30, 1921, and for other purposes," witnesseth:

Article I.

The lessor, in consideration of royalties to be paid and the covenants to be observed, as hereinafter specifically set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits in or under the tracts of land hereinafter in this section described for a period of 20 years and so long thereafter as oil or gas is produced in paying quantities from said lands, the same being lands described in Executive order of withdrawal issued by the President of the United States on April 30, 1915, creating naval petroleum reserve No. 3, Wyoming No. 1, involving 9,321 acres, more or less, described as follows, to-wit:

Sixth principal meridian:

T. 38 N., R. 78 W.—

Sec. 2, SW ¼ of NE. ¼, W. ½, W. ½ of SE. ¼.

Sec. 3, all.

Sec. 4, NE. ¼, NE. ¼ of NW. ¼, N. ½ of SE. ¼, SE. ¼ of SE. ¼.

Sec. 9, E. ½ of NE. ¼, NE. ¼ of SE. ¼.

Sec. 10, all.

Sec. 11, W. ½ of NE. ¼, W. ½ and SE. ¼.

Sec. 14, all.

Sec. 15, N. ½, N. ½ of SW. ¼, SE. ¼ of SW. ¼, SE. ¼.

Sixth principal meridian—Continued.

T. 38 N., R. 78 W.—Continued.

Sec. 22, NE. ¼, NE. ¼ of NW. ¼, E. ½ of SE. ¼.

Sec. 23, all.

Sec. 26, NW. ¼ of NE. ¼, N. ½ of NW. ¼.

T. 39 N., R. 78 W.—

Sec. 20, E. ½ of NE. ¼, SE. ¼.

Sec. 21, all.

Sec. 22, SW. ¼ of NW. ¼, SW. ¼.

Sec. 27, W. ½ of NE. ¼, W. ½ and SE. ¼.

Sec. 28, all.

Sec. 29, E. ½, E. ½ of NW. ¼, N. ½ of SW. ¼, SE. ¼ of SW. ¼.

Sec. 32, N. ½ of NE. ¼, SE. ¼ of NE. ¼.

Sec. 33, N. ½, N. ½ of SW. ¼, SE. ¼ of SW. ¼, SE. ¼.

Sec. 34, all.

Sec. 35, SW. ¼ of NW. ¼, W. ½ of SW. ¼, SE. ¼ of SW. ¼.

all in the county of Natrona, State of Wyoming, together with the right to construct and maintain thereupon, over, upon, and across or under the surface of said lands, all works, buildings, plants, waterways, roads, telegraph and telephone lines, pipe lines, reservoirs, tanks, tank farms and pumping stations, or other structures necessary to the full enjoyment hereof, and also the right to construct and maintain upon, across and under any other public lands under the laws and regulations pertaining to the construction and maintenance of pipe lines across the public domain, such pipe line or pipe lines as may be necessary for the carrying out of the purposes hereof, together with such buildings, pumping stations, tanks and other structures as may be necessary to the efficient and economical operation thereof.

Article II.

In consideration of the foregoing, the lessee agrees as follows, to-wit:

1. To furnish bond with approved surety in the penal sum of two hundred fifty thousand ($250,000) dollars, conditioned upon compliance with the terms of this lease.

2. To drill wells as follows:

(a) Within 180 days from the date of execution and delivery of this agreement, to proceed with reasonable diligence to begin operations for the drilling on said premises of not less than twenty test wells, hereinafter sometimes referred to as the first series of wells, and to continue such drilling with reasonable diligence as to each of said wells to production, or to a point where the well is, in the judgment of the lessee, demonstrated to be unsuccessful, but no such well shall be abandoned as unsuccessful unless and until the same shall have been drilled either to the second Wall Creek sand, or to a depth which is reasonably estimated to be sufficient to penetrate said sand. Said wells shall be drilled on locations within a radius of 250 feet from the following points, to-wit:

Township 39, N., range 78 west:

Sec. 20, 300' from center of section.

Sec. 29, NE. ¼ of NW. ¼ along boundary line of reserve.

Sec. 21, center.

Sec. 21, NW. corner of section.

Sec. 22, SW. corner.

Sec. 28, center NW. ¼.

Sec. 32, NE. corner.

Sec. 28, center of SE. ¼.

Township 39 N., range 78 west—Continued.

Sec. 27, W. ½ of SE. ¼.

Sec. 33, center of SE. ¼.

Sec. 34, center.

Township 38 N., range 78 west:

Sec. 4, E. ½ of SE. ¼.

Sec. 3, center of section.

Sec. 2, center of NW. ¼.

Sec. 2, center of south line of SW. ¼.

Sec. 10, center of south line of NW. ¼.

Sec. 10, center SE. ¼.

Sec. 11, center south line NW. ¼.

Sec. 14, center south line NW. ¼.

Sec. 15, anywhere on section.

(b) Upon the completion of each well of said first series, lessee agrees to proceed with due diligence to take a daily gauge or test of each such well for a period of sixty days, for the purpose of ascertaining the average daily natural production of each of said wells for such sixty day period. Upon the completion of such sixty days test period for all of said first series of wells, a concurrent daily gauge or test shall then be made, for a period of sixty days, of all the wells of said first series which are producing oil in commercial quantities. If for said last sixty days test period the total average daily natural production from all of the said wells so tested equals or exceeds twenty thousand (20,000) barrels, then and in that event lessee agrees that it, or its nominee, will within sixty days thereafter commence operations for the construction of and continue with reasonable diligence to completion, a pipe line of not less than twenty five thousand (25,000) barrels daily capacity, extending from the lands described in Article I hereof to a point or connection on the main pipe line now operated by Sinclair Pipe Line Company or on the main pipe line now operated by Prairie Pipe Line Company and extending from the mid-continent field to Chicago, Illinois, said pipe line to be a common carrier.

Provided, That upon the expiration of the first test period of sixty days for at least the first eighteen of the wells of said first series, the concurrent test above referred to of all the wells of said series producing oil in commercial quantities, may then be taken, and the total average daily natural production of all such wells from said test divided by the number of test wells that have been drilled shall be deemed to be the average daily natural production per well of each well of said first series, if any, not then completed, and if the total average daily natural production of all of the wells so tested, plus the total average daily natural production (estimated as herein provided) of the wells of said first series, if any, not then completed, shall equal or exceed 20,000 barrels, then and

in that event lessee or its nominee shall within sixty days thereafter commence operations for the construction of the pipe line hereinbefore referred to.

(c) If the average daily natural production from all of said producing wells of said first series does not upon said concurrent test for sixty days equal twenty thousand barrels, then and in that event lessee shall forthwith proceed with reasonable diligence to drill a second series of wells, as follows: For each of such twenty wells of the first series the average daily natural production of which is at least one hundred barrels for the first sixty days test period for such well hereinbefore provided for, lessee shall forthwith proceed with reasonable diligence to drill two (2) additional wells.

Upon the completion of each well of the second series, lessee shall proceed with due diligence to take a daily guage or test thereof for a period ow sixty days for the purpose of ascertaining the average daily natural production of each such wells over such test period. Upon the completion of said sixty days test period for all of the wells of said second series, a concurrent daily guage or test shall then be made for a period of sixty days, of all wells of both the first series and of the second series, which are producing oil in commercial quantities. If for said concurrent sixty days test period the average daily natural production from all of such wells then drilled and so tested equals or exceeds twenty thousand (20,000) barrels then and in that event lessee agrees that it or its nominee will within sixty days thereafter commence operations for the construction of and continue with reasonable diligence to completion a pipe line of at least twenty-five thousand barrels daily capacity between the points hereinbefore named in subsection (b) hereof.

Provided, That whenever at least 90 per cent of the wells of the second series have been completed and tested for sixty days the concurrent test of all the wells of both the first and second series producing oil in commercial quantities may then be made and the total average daily natural production of all the wells of the second series during such test period divided by the number of wells of the second series then drilled shall be deemed to be the average daily natural production per well of each of the wells of the second series, if any, not then completed; and if the total average daily natural production of all of the wells so tested, plus the total average daily natural production (estimated as herein provided) of the wells of said second series if any, not then com-

pleted, shall equal or exceed 20,000 barrels then and in that event lessee or its nominee shall within sixty days thereafter commence operations for the construction of the pipe line hereinbefore referred to.

(d) If the average daily natural production from all of such producing wells of the first and second series does not, upon said concurrent test for a sixty-day period, equal or exceed twenty thousand barrels, then and in that event lessee shall forthwith proceed with reasonable diligence to drill a third series of wells, as follows:

For each well of the second series the average daily natural production of which for the first sixty days test period for such well, as hereinbefore provided, is at least one hundred barrels, lessee shall forthwith proceed with reasonable diligence to drill two (2) additional wells.

Beginning sixty days after the completion of the last well of the third series above referred to (if lessee should be required to drill said third series hereunder), a concurrent daily guage or test shall then be made for a period of sixty days of all wells of the first, the second, and the third series which are producing oil in paying quantities, and if the average daily natural production of all said wells for such test period of sixty days equals or exceeds twenty thousand (20,000) barrels, lessee or its nominee shall within sixty (60) days thereafter commence operations for the construction of and, continue with reasonable diligence to completion, the pipe line as hereinbefore in subsection (b) of this article described.

Provided, however, that if at any time lessee shall begin operations for the construction of a pipe line, as hereinbefore described, whether the obligation so to do shall have arisen under the terms hereof or not, and continue with reasonable diligence to completion of the same, then and in that event upon the beginning of operations for the construction of such pipe line the obligation to drill further test wells of either the second or third series shall cease and determine.

Provided, however, That if, at any time after the completion of all the test wells of the first series and of the second series and at least fifty per cent (50%) of the test wells of the third series hereinbefore mentioned, the lessor shall so request, the lessee shall make a concurrent test for sixty (60) days of all of the wells producing oil in paying quantities at such time, and if the production of all of such wells reaches

an average daily natural production of twenty thousand (20,000) barrels for such period of sixty (60) days, lessee agrees that it or its nominee will within sixty (60) days thereafter begin operation for the construction of and continue with reasonable diligence to completion said pipe line hereinbefore referred to.

(e) Definition of "natural production": For the purpose of this contract the term "natural production" shall mean the production by natural flow or the pumping of crude petroleum from a well that has not been artificially stimulated by the use of dynamite, nitroglycerin, or other explosives, or by any other method employed for increasing or stimulating the production of such well.

(f) No test well which the lessee is required to drill upon the lands hereby leased, as hereinbefore set forth, shall be abandoned by the lessee as unsuccessful, unless and until the same shall have been drilled to the second Wall Creek sand, or to a depth which it is reasonably estimated to be sufficient to penetrate said sand; and at least one of the test wells required to be drilled by the lessee under the terms of this agreement shall be drilled to a depth estimated to penetrate the Lakota sand: Provided, however, That the lessee shall not be required to drill such well to a depth in excess of 4,300 feet.

(g) Upon the completion of the test wells hereinbefore provided for the lessee shall continue in good faith to use due diligence to fully develop the lands hereby leased for the production of oil and gas.

(h) The lessee agrees to drill all necessary wells to offset the wells of others on adjoining lands. The lessee further agrees to maintain all wells in a state of production until each well no longer produces oil or gas in paying quantities when operated with diligence and in accordance with good practice.

3. Royalties.—The lessee agrees to pay and deliver to the lessor as royalties under this lease a royalty on all gas and casing-head gasoline produced and sold from said lease, or used other than for production purposes on the lease, and on all oil produced, except that used for production purposes or unavoidably lost, as follows:

(a) On gas and casing-head gasoline: On gas produced and sold, whether same shall be gas from which the casing-head gasoline has been extracted or otherwise, 12½ per cent of value thereof in the field where produced, where the aver-

age amount produced and sold per day for the calendar month from the land leased is less than 3,000,000 cubic feet, and 16 2/3 per cent where the average daily amount produced and sold is 3,000,000 cubic feet or over.

On casing-head gasoline 16 2/3 per cent of the value of the casing-head gasoline extracted from the gas produced and sold, computed on the basis provided for in the present existing operating regulations of the Department of the Interior promulgated pursuant to the provisions of the act of February 25, 1920 (hereinafter in Article III hereof referred to), known as the leasing act, but only in so far as applicable.

The value in the field where produced of gas and casing-head gasoline for royalty purposes, unless such gas or casing-head gasoline is disposed of under an approved sales contract as provided in section 5 of this article or other method, shall be as fixed by the Secretary of the Interior.

In cases where the gas produced and sold has a value both for casing-head gasoline content and as dry gas from which the casing-head gasoline has been extracted, then the royalties above provided shall be paid on both of such values.

(b) The royalties on oil payable hereunder shall be based upon the amount of oil produced from said lease, less deductions for sediment, impurities, etc., to the extent and in the manner prevailing in the Salt Creek oil field, Wyoming, at the time said oil is produced (except oil used for production purposes thereon or unavoidably lost), the schedule of royalties to be as follows:

(1) For oil produced of 34 degrees Baumé or over:	Per Cent.
On that portion of the average production per well not exceeding 50 barrels per day for the calendar month	12½
On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month	16 2/3
On that portion of the average production per well of more than 100 barrels and not more than 200 barrels per day for the calendar month	20
On that portion of the average production per well of more than 200 barrels and not more than 300 barrels per day for the calendar month	25

On that portion of the average production per well of more than 300 barrels and not more than 400 barrels per day for the calendar month 30

On that portion of the average production per well of more than 400 barrels and not more than 500 barrels per day for the calendar month 35

On that portion of the average production per well of more than 500 barrels and not more than 600 barrels per day for the calendar month 40

On that portion of the average production per well of more than 600 barrels and not more than 800 barrels per day for the calendar month 42½

On that portion of the average production per well of more than 800 barrels and not more than 1,000 barrels per day for the calendar month 45

On that portion of the average production per well of more than 1,000 barrels per day for the calendar month 50

(2) For all oil produced of less than 34 degrees Baume: Per Cent.

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month 12½

On that portion of the average production per well of more than 20 barrels and not more 50 barrels per day for the calendar month 14 2/7

On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month 16 2/3

On that portion of the average production per well of more than 100 barrels and not more than 200 barrels per day for the calendar month 20

On that portion of the average production per well of more than 200 barrels per day for the calendar month 25

The unit of quantity for the fuel oil and royalty oil hereinunder shall be the barrel of 42 United States gallons of 231 cubic inches at a standard temperature of 60 degrees Fahrenheit. Any temperature corrections shall be made for the fuel oil at the time of delivery by the divisional method at the rate

of .0004 for every one degree Fahrenheit if the temperature of this oil is above or below 60 degrees Fahrenheit.

Only wells which have a commercial production during at least a part of the month shall be considered in ascertaining the average production as above provided for the purpose of computing the royalty. The method of determining number of wells having a commercial production on the lease shall be as follows:

Case 1: Where no new wells have been brought in during the calendar month, count as producing wells each well which had produced 15 days or more during the month and disregard those which have produced less than 15 days during the month.

Case 2: When initial production of a lease is made during the calendar month, compute royalty on basis of well days producing.

Case 3: When a new well is brought in during the calendar month on a producing lease on or before the 20th of the month, each new well will be considered as a producing well for the entire month, but if such new well comes in after the 20th of the month it shall not be considered as a producing well.

Case 4: "Head wells" that make their best economical production by intermittent pumping will be considered as steady producers if so operated throughout the month.

(c) The lessor agrees to, and does hereby, sell to the lessee, and the lessee agrees to, and does hereby, purchase from the lessor all the royalty oil hereinbefore mentioned, as and when the same is produced by the lessee, so that the lessee shall take and have title to and possession of, and the right to dispose of, all oil, as and when the same is produced. In payment for said royalty oil, and in lieu of the delivery in kind to the lessor, lessee agrees to set up an oil exchange credit to lessor therefor and to issue to the lessor, as evidence thereof, oil certificates showing the amount of said royalty oil taken by the lessee and the value thereof. The value of said royalty oil produced and run from the lands hereby granted shall be the same as the highest posted market price offered or paid either (1) in the Salt Creek oil field, Wyoming, for a majority of the oil purchased in said field, or (2) in the mid-continent oil field by the Sinclair Crude Oil Purchasing Company, or

(3) in the mid-continent oil field by the Prairie Oil and Gas Company, whichever of such prices is the highest, for oil of the same gravity, at the time such royalty oil is produced and run from the lands hereby granted. Such certificates shall be issued on the 10th day of each month for the royalty oil produced during the preceding calendar month.

The oil certificates above referred to shall be noninterest bearing and shall be in form substantially as follows, to wit:

No.——— Date:———

Oil Certificate.

This certificate evidences the delivery by United States Government of ——— barrels (42 U. S. gallons) of ——— gravity crude oil from Naval Reserve No. 3, Natrona County, Wyoming, to the undersigned, said oil being of a cash value of ——— ($———).

This certificate will be redeemed upon presentation at the office of the maker, at ———, as follows:

(a) As a credit upon, or for the extinguishment of any obligation to the maker hereof from the United States Government by reason of the construction of steel tank storage for the use of the United States Navy in the storing of fuel oil under the agreement for the exchange of crude oil for fuel oil and storage under the contract between the United States of America, acting on this behalf by the Secretary of the Interior and the Secretary of the Navy, of the one part, and the Mammoth Oil Company of the other part, of date the ——— day of April, 1922; or

(b) The maker hereof will deliver for the use of the United States Navy fuel oil of the specifications and under the terms and upon the exchange basis fixed in the certain contract dated ——— day of March, 1922, between the United States Government and the maker hereof; or

(c) The maker hereof will deliver gasoline, kerosene, lubricating oils, and/or other petroleum products for the requirements of the United States Navy, the basis of exchange therefor and the conditions of delivery to be as mutually agreed upon in a separate contract between the United States Government and the maker hereof; or

(d) Upon the conditions stated in the contract of the ——— day of April, 1922, above referred to, this certificate may be redeemed in cash.

If redeemed in liquidation of such indebtedness of lessor to lessee for amounts advanced for construction of storage, or if redeemed in cash, such redemption shall be at the face value stated above of the crude oil delivery of which is evidenced hereby.

....

By..... .....

Said oil certificates so issued by the lessee shall be redeemed by the lessee either in liquidation of amounts advanced or expended by lessee or its nominee for the construction of storage for lessor as hereinafter provided, or by deliveries of fuel oil of the specifications hereinafter set forth for the use of the United States Navy, or by deliveries of gasoline, kerosene, lubricating oils, and or other petroleum products for the requirements of the United States Navy, or subject to the conditions hereinafter set forth, a portion of them may be redeemed in cash, all according to the terms, in the manner, on the basis of exchange and upon the conditions as hereinafter set forth, as follows to-wit:

The lessee agrees, if and when requested so to do by the lessor, to construct or to pay the cost of construction of steel storage tankage up to but not in excess of such an amount as shall be estimated to be necessary or required for the storage by the lessor of the fuel oil to be received by it as hereinbefore provided in exchange for royalty crude oil from the lands hereby leased; said storage to be constructed as and when the same shall become necessary or shall be required for the storage of such fuel oil so delivered by the lessee or its nominee, and said storage to be located at points designated by the lessor; the cost of such tankage to be liquidated by lessor by delivering to the lessee or its nominee crude oil certificates hereinbefore referred to, said certificates so delivered to be of the face amount in value equal to the cost of such tankage for which the lessee or its nominee shall have paid or become liable.

The conditions upon which a portion of said certificates may be redeemed in cash are as follows: Lessor shall have the option, on or before July 1, 1923, to notify the lessee in writing if it elects to receive payment in cash for any portion of said crude oil certificates to be issued for royalty oil which may be run during the calendar year 1924. If it does so elect to receive cash and shall so notify lessee at the time above mentioned, it shall at said time also notify lessee the amount, if any, of fuel oil, gasoline, kerosene, lubricating

oils, and/or other petroleum products which it desires to receive for royalty crude oil run during said year, and that it elects to have the balance of said certificates (over and above those required for liquidation of steel tank storage) redeemed in cash. Lessor shall likewise have the option in each year thereafter during the continuance of this contract to similarly notify lessee on or before July 1st with reference to redemption of crude oil certificates to be issued for royalty oil run during the next succeeding calendar year. If such notice is so given, lessee shall, during the succeeding calendar year, redeem said crude oil certificates in cash over and above (a) those required to liquidate expenditures made by lessee for construction of steel tank storage hereunder, and (b) those redeemed in fuel oil, gasoline, kerosene, lubricating oils, and/or other petroleum products pursuant to said notice. If such notice is not given at the time herein above provided, lessee shall not be under obligation to redeem in cash any of such crude oil certificates issued for royalty oil run during the next succeeding calendar year.

On or before forty-five (45) days from the date when any such oil certificates are issued to the lessor, lessor shall present the same to the lessee or its nominee for redemption, or shall notify lessee or its nominee in writing of the amount of such certificates so held by it for redemption. For any and all sums which shall have been theretofore advanced or paid by lessee for the account of lessor for the construction of storage, as hereinbefore provided, and not previously liquidated, lessor shall at said time deliver to lessee or its nominee oil certificates of a total face amount up to the amount of such sums so advanced or paid by lessee. As to any and all additional certificates so presented for redemption or held by lessor for redemption over and above those required to liquidate such indebtedness for sums advanced or paid by lessee or its nominee for the construction of storage lessor shall at such time notify lessee or its nominee what portion thereof it desires to have redeemed in fuel oil, and also what portion, if any, it desires to have redeemed in gasoline, kerosene, lubricating oils, and/or other petroleum products for the use of the United States Navy and what portion, if any, pursuant to the conditions hereinbefore set forth, it desires to have redeemed in cash.

For those certificates which are to be redeemed in gasoline, kerosene, lubricating oils, and/or other petroleum products for the use of the United States Navy the manner and basis of exchange and the conditions of delivery shall be such

as is hereafter mutually agreed upon between the parties hereto. Such certificates as are redeemed in cash shall be redeemed on the basis of the value of the crude oil as stated on the certificate. For those certificates which are to be redeemed in fuel oil the lessor shall notify the lessee or its nominee, on or before the expiration of the forty-five (45) day period above referred to, the amount of fuel oil it desires to have delivered, specifying the place or places of said delivery, which shall be one or more of the delivery points hereinafter designated, and at the time such deliveries are made lessor will surrender to lessee or to its nominee oil certificates above referred to on the following basis of exchange, to-wit:

One (1) barrel of such fuel oil for each barrel of crude royalty oil of 34 degrees Baume, or over, represented on the face of the certificates;

Sixty three per cent (63%) of one barrel of such fuel oil for one barrel of crude royalty oil of less than 34 degrees Baume represented on the face of the certificates.

Such fuel oil shall be delivered by lessee or his nominee at any of the following points at the option of the lessor expressed as provided in this lease, to-wit:

Houston, Texas.
Pensacola, Florida.
New Orleans, Louisiana.
Charleston, S. C.
Annapolis, Maryland.
Indian Head, Maryland.
New York, N. Y.
Machias, Maine.
Portsmouth, N. H.
Boston, Mass.
Melville, R. I.
Woods Hole, Mass.
New Haven, Conn.
Guantanamo Bay, Cuba.
Key West, Florida.
Mobile, Alabama.
Washington, D. C.
Baltimore, Maryland.
Norfolk, Virginia.
Philadelphia, Pa.
Bath, Maine.
Rockland, Maine.
Quincy, Mass.
Block Island, R. I.
New London, Conn.
Bridgeport, Conn.
Fall River, Mass.

All deliveries shall be in full tank ship lots at points where shore installations are sufficient to receive the same, except that lessee shall have the right to make delivery in less than a full tank ship lot if it so desires.

Where fuel oil is requested to be delivered at a point where there is no shore installation for discharge of ocean-going vessels, deliveries of fuel oil for such points shall be made at

the nearest terminal operated by the lessor where delivery from such vessels is practicable. All expense of making delivery of such oil from said terminal to the place where said delivery is requested to be made, including furnishing of installation and loading and unloading facilities, all loading and unloading charges, freight and transportation charges, whether by rail or by water, and including barge and lighterage charges, shall be borne and paid for by the lessor.

The manner of delivery and inspection of the oil at point of loading, the manner and rate of discharge from vessels and or tank cars, demurrage, notice of arrival, evidences of acceptance, issuance of deliver tickets, method of measuring cargo, force majeure, etc., shall be in accordance with the prevailing commercial practice in shipping and transportation business with reference to fuel oil deliveries prevailing at the time such deliveries are made.

As to the said certificates which are to be redeemed in fuel oil and as well those certificates which are to be redeemed in gasoline, kerosene, lubricating oils, and or other petroleum products for the use of the United States Navy, lessee or its nominee shall use due diligence to make such deliveries and shall make the same within a reasonable time after the notice above referred to has been given by lessor notifying lessee or its nominee of the amount of fuel oil it desires to have delivered, and the place or places of such delivery, or notifying lessee or its nominee of the amount of gasoline, kerosene, lubricating oils, and or other petroleum products which it desires to have delivered and the place or places of such delivery; and the lessor shall receive such deliveries at the time the same are tendered. For all of such certificates as are to be redeemed in cash, lessee shall make payment to lessor within fifteen (15) days after being notified by lessor of the amount of such certificates which it wishes to have redeemed in cash.

If by reason of delay caused solely by the lessee or its nominee sufficient steel tankage shall not have been constructed to receive fuel oil as and when the same shall be due from the lessee to the lessor, the lessee agrees that it will provide at its own expense for the storage of such fuel oil until sufficient tankage therefor belonging to the lessor shall have been constructed.

The fuel oil to be delivered to lessor hereunder by lessee or his nominee shall be of the specifications as follows, inspection to be made at port of loading, to-wit:

Bunker Fuel Oil A.

A hydrocarbon oil, free from grit, acid, and fibrous or other foreign matters likely to clog or injure the burners or valves. If required, it shall be strained by being drawn through filters or wire gauze of sixteen meshes to the inch. The clearance through the strainer shall be at least twice the area of the suction pipe, and the strainers shall be in duplicate.

Properties and Tests.

(1) Flash point, method No. 110-2: The flash point shall not be lower than 150 degrees F. (Pensky-Martens closed tester.) In case of oils having a viscosity greater than 30 seconds at 150 degrees F. (Saybolt Furol viscosimeter, 8 degrees Engler), the flash point shall not be below the temperature at which the oil has a viscosity of 30 seconds.

(2) Viscosity, method No. 30.3: The viscosity shall not be greater than 100 seconds at 77 degrees F. (Saybolt Furol viscosimeter.)

(3) Water and sediment, method No. 300.3: Water and sediment combined shall not amount to over 1 per cent.

(4) All tests shall be made according to the methods for testing petroleum products adopted by the Interdepartmental Petroleum Specification Committee.

Provided, That if at any time in the future the lessor should desire to receive fuel oil of an inferior quality than that provided for herein, in exchange for said certificates representing crude royalty oil, the rate and basis of exchange for such fuel oil shall be the subject of such future contract as may be entered into between the lessor and the lessee.

5. To file with the Secretary of the Interior copies of all sale contracts for the disposition of casing-head gasoline and gas produced hereunder, except that used for production purposes on the lands hereby leased.

6. To furnish monthly statements, in detail, in such form as may be prescribed by the lessor, showing the amount, quality, and value of all oil and casing-head gasoline and gas saved during the preceding calendar month, as the basis for computing royalty due the lessor. The leased premises and all wells, improvements, machinery, fixtures thereon or connected therewith shall be open at all times for the inspection of any duly authorized officer of the Department of the Interior.

7. To furnish, when and at such times as the Secretary of the Interior shall require, in the manner and form prescribed by the Secretary, a plat showing all development work and improvements on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands.

8. Log of wells.—To keep a log in the form prescribed by the Secretary of all the wells drilled by the lessee, showing the strata and character of the ground passed through by the drill, which log, or copy thereof, shall be furnished to said lessor on demand.

9. Diligence—Prevention of waste—Health and safety of workmen.—To exercise reasonable diligence in drilling and operating wells for the oil and gas on the lands covered hereby, while such products can be secured in paying quantities, unless consent to suspend operation temporarily is granted by the Secretary of the Interior; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the oil sands or oil bearing strata to the destruction or injury of the oil deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely any well before abandoning the same so as to effectually shut off all water from the oil or gas bearing strata; not to drill any well within 200 feet of any of the outer boundaries of the lands covered hereby, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners; to conduct all mining, drilling, and related production operations subject to the inspection of the lessor; to carry out at expense of the lessee all reasonable orders and requirements of lessor relative to prevention of waste, and preservation of the property and the health and safety of the workmen, and on failure so to do the lessor shall have the right to enter on the property to repair damage or prevent waste at the lessee's cost; to abide by and conform to regulations in force at the time the lease is granted covering the matters referred to in this paragraph.

The lessee, however, shall not be held responsible for delays or casualties by causes beyond lessee's control. In all wells drilled the lessee agrees to make a test of each sand or oil horizon lying above the first Wall Creek sand for a suffi-

cient period to establish to the satisfaction of the Secretary of the Interior whether or not such horizon is commercially productive of oil. In case any horizon so tested is found productive of oil in commercial quantities, the lessee on deepening this particular well shall land a string of casing below the horizon tested and fill the annular space between the outside of the casing and the wall of the hole with an amount of cement estimated to reach from the casing shoe to a point at least 75 feet above the top of the sand or horizon, provided the Secretary of the Interior may, in his discretion, approve another method of protecting the upper sand or sands or horizons.

10. Taxes and wages—Freedom of purchase.—To pay when due, all taxes lawfully assessed and levied under the laws of the State upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

Article III.

For the purpose of the supervision of drilling for and production of oil and gas and the computation of royalties hereinbefore provided, the practices adopted by the Department of the Interior in the supervison of work under the leasing act of February 25, 1920, and embodied in the following:

1. Plan for conducting work under operating regulations to govern the production of oil and gas under the act of February 25, 1920, Public, 146, 1921.

2. Tables for computing oil royalties under the leasing act of February 25, 1920, by R. C. Patterson and D. W. Moran, 1921.

3. Leasing Circular No. 31D. Schedule adopted for royalties on gas and casing head gasoline from Government leases under leasing act (Public, 146) where royalties are not specified in lease or special contract with the Government, 1921.

shall, but only in so far as applicable, be applied to this lease.

Article IV.

1. Rights reserved—Easements and rights of way.—The right to permit for joint or several use easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or ap-

propriate to the working of the same or of other lands containing the deposits referred to in this lease, and the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

2. Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for the use of the lessee in the carrying out of the purposes of this contract.

Provided, however, That the lessor agrees that it will not grant to any other party any surface or other rights concerning the lands covered by this lease which will in anyway interfere with the exercise of the rights hereby granted, or with the carrying out of the purposes of this lease.

3. Helium.—Pursuant to section 1 of the leasing act of February 25, 1920, the lessor reserves the right to take all helium from any gas produced under this lease, but the lessee shall not be required to extract and save the helium for the lessor; in case the lessor elects to take the helium, the lessee shall deliver all gas containing same, or portion thereof desired, to the lessor in the manner required by the lessor, for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

Provided, That the lessee shall not, as a result of the operation in this section provided for, suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise for which the lessee is not reasonably compensated, save for the value of the helium extracted; the lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

Provided, That the operation, if any, under this reservation, shall be carried on in such a manner as shall not interfere in any way with the operations of the lessee under this lease, or the carrying out of the purposes thereof.

4. Pipe lines to convey at reasonable rates.—The right to require the lessee, his nominee, his assignees, or beneficiary, if owner or operator of, or owner of a controlling interest in any pipe line, or any company operating the same which may

be operated accessible to the oil derived from lands under such lease, to accept and convey at reasonable rates and without discrimination the oil of the Government or of any citizen or company, not the owner of any pipe line, operating a lease or purchasing oil or gas under the provisions of the leasing act of February 25, 1920. If the obligation of the lessee to construct the pipe line hereinbefore in this lease referred to shall arise, and if at any time after such line is completed, the crude oil offered for transportation through such pipe line should be in excess of the capacity of the said line, the lessor herein reserves the right to require the lessee or its nominee or the successor in title of either of them in and to the said pipe line, to accept and convey at reasonable rates the royalty crude oil of the United States Government produced in the Salt Creek field, Wyoming, in preference to the oil of any other party.

Article V.

Surrender and termination of lease.—The lessee may, by and with the consent and approval of the Secretary of the Interior, first had and obtained in writing, surrender and terminate this lease upon payment of all royalties, and other obligations due and payable to the lessor, and upon payment of all wages and moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made full provision for conservation and protection of the property; upon like consent had and obtained the lessee may surrender any legal subdivisions of the area included herein.

Article VI.

Purchase of materials, etc., on termination of lease.—Upon the expiration of this lease, or the earlier termination thereof, pursuant to the last preceding section, the lessor or another lessee may, if the lessor shall so elect within six months from the termination of the lease, purchase all materials, tools, machinery, appliances, structures, and equipment placed in or upon the land by the lessee, and in use thereon as a necessary or useful part of an operating or producing plant, on the payment to the lessee of such sum as may be fixed as a reasonable price therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee, and the other by the two so chosen; pending such election all equipment shall remain in normal position. If

the lessor, or another lessee, shall not, within six months, elect to purchase all or any of such materials, tools, machinery, appliances, structures, and equipment, the lessee shall have the right at any time, within ninety days, to remove from the premises all the materials, tools, machinery, appliances, structures, and equipment which the lessor shall not have elected to purchase, save and except casing in wells and other equipment or apparatus necessary for the preservation of the well or wells.

Article VII.

Judicial proceedings in case of default.—If the lessee shall make default in the performance or observance of any of the terms, covenants, and stipulations hereof, and such default shall continue for ninety (90) days after the service of written notice thereof by the lessor, then the lessor may institute appropriate judicial proceedings for the forfeiture and cancellation of this lease; but this provision shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any cause of forfeiture, or for the same cause occurring at any other time.

Article VIII.

Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to the heirs, executors, successors, or assigns of the respective parties hereto.

Article IX.

Unlawful interest.—It is also further agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

Article X.

Assignment.—This lease or any interest therein, as to all or any part of the lands covered thereby, may be assigned or

sublet by the lessee, subject to the approval and consent, in writing, of the Secretary of the Interior first had and obtained.

THE UNITED STATES OF AMERICA,
By Albert B. Fall,
Secretary of the Interior.
Edwin Denby, Secretary of the Navy.

MAMMOTH OIL COMPANY,
By H. F. Sinclair, President.

Attest:
N. D. Farham, Assistant Secretary.

110 Endorsed: Filed in the District Court on April 10, 1924.

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111 Motion of Defendant Mammoth Oil Company for Continuance.

Comes now the defendant, Mammoth Oil Company, by G. T. Stanford and George P. Hoover, of its attorneys, and moves the Court to enter an order herein continuing the date of hearing of the above entitled cause from October 7th, 1924, to November 18th, 1924, for the following reasons:

1. That G. T. Stanford and Martin W. Littleton, two of the counsel for the defendant, are required to attend the trial of a certain cause of action, in which they are counsel, now pending in the Supreme Court of the State of New York, for the County of Queens, on October 7th, 1924; that said cause of action in said Court has heretofore been continued at the request of said Stanford and Littleton, but although they have endeavored so to do, they have been unable to obtain a further continuance thereof.

112 2. That notwithstanding counsel for the defendant have at all times since the filing of the Bill of Complaint herein been diligently engaged in the preparation for the trial of said cause, nevertheless by reason of the magnitude of the said cause and the immense amount of time and labor required in the assembling of the evidence as to the matters of fact, and the examination and study of the questions of law which it is expected will be presented during the course of said trial, said counsel find it will be impossible to complete such preparation in time to proceed with the trial of said cause on October 7th, 1924; because of the situation aforesaid counsel believe that it will be detrimental to the in-

terests of the defendant to be required to begin said trial on October 7th, 1924.

3. That defendant will require additional time for the preparation of its defense in the above entitled cause by reason of its counsel being compelled to attend at Toronto, Canada, on September 23d and September 24th, the taking of depositions pursuant to a commission heretofore issued by this Honorable Court on the application of the plaintiff herein.

Wherefore defendant, Mammoth Oil Company prays that an order be entered by this Court continuing the date
113 of the hearing of the above entitled cause to Tuesday, November 18th, 1924.

MAMMOTH OIL COMPANY,
By G. T. Stanford
Geo. P. Hoover,
Attorneys

A copy of this motion, together with the affidavits in support thereof, has been duly served on counsel for plaintiff.

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114 (Affidavit of George P. Hoover.)

State of New York,
County of New York—ss.

Personally appeared before the undersigned, a Notary Public in and for the County and State aforesaid, George P. Hoover, who first having been duly sworn according to law, did depose and say:

That he is a member of the Bar of the Supreme Court of the United States, actively engaged in the practice of his profession principally in the District of Columbia; that he is one of the attorneys for the defendant, Mammoth Oil Company, in the above entitled cause; that he is also attorney for Harry F. Sinclair in a certain cause of action pending in the Supreme Court of the District of Columbia, entitled "United States vs. Harry F. Sinclair, et al", known on the docket of said Court as "Criminal No. 42301" and in a certain other cause of action pending in said Court entitled "United States vs. Harry F. Sinclair" known on the docket of said Court as "Criminal No. 42060"; that said last named
115 causes of action arise out of and are incident to the matters and things which are the subject of the Bill of

Complaint filed on behalf of the United States in the above entitled cause; that since being retained as counsel in said causes of action he has been actively engaged in the preparation for the presentation of the questions which have from time to time arisen therein; and has devoted practically all of his time in the preparation for the trial of the said causes of action; that in the cause of action known as "Criminal No. 42060", the Court of Appeals of the District of Columbia has recently granted an order allowing a special appeal from an order made by the trial court overruling the demurrer of said defendant as to certain counts of the indictment in said cause; that compliance with the rules of the Court of Appeals requires that affiant devote a large part of his time to the preparation and filing of a brief on behalf of appellant in said cause.

Affiant further states that notwithstanding the fact that due diligence has been exercised by counsel for the defendant Mammoth Oil Company, in the preparation for the trial of said cause, that because of the magnitude of the issues involved and the time and labor required in the assembling of the evidence as to the matters of fact, and the examination and study of the questions of law which it is expected will be presented in the trial of said cause, it has been impossible for counsel for the defendant, within the time permitted by the setting of said cause on October 7th, 1924, to enable them to complete the preparation for the trial thereof.

116 Affiant further states that by reason of the matters and things therein set forth he does not feel that the defense of the defendant Mammoth Oil Company can be properly prepared so as to be presented at the trial of said cause on October 7th, 1924, and that if the defendant is required to proceed to trial on said date it will be detrimental to the interests of said defendant in said cause of action.

GEO. P. HOOVER

Subscribed and sworn to before me this 11th day of September, 1924.

(Seal) RUTH COTELLOE
Notary Public, Kings County No. 445
Kings County Register No. 5173
Certificate filed N. Y. County No. 331
New York County Register No. 5304

Commission expires March 30, 1925.

117 (Affidavit of G. T. Stanford.)

State of New York,
County of New York—ss.

G. T. Stanword of lawful age being first duly sworn deposes and says:

1. That he is the regular counsel for the defendant Mammoth Oil Company and has charge of its litigation in the above entitled cause, and that there is associated with affiant Martin W. Littleton, who will also actively participate in the trial on behalf of the defendant; that affiant is General Counsel for Sinclair Consolidated Oil Corporation and its various subsidiary corporations and as such General Counsel has charge of all legal matters and litigation pertaining to said Sinclair Consolidated Oil Corporation or its subsidiaries. That there is now pending in the Supreme Court of the State of New York for Queens County, New York, an action entitled "International Petroleum Company vs. Mexican Sinclair Petroleum Corporation"; that said cause of action is of importance to said defendant and involves a large sum of money, to wit: in excess of $1,500,000. That said
118 affiant has control and supervision of said litigation, and it is indispensable to the interests of the defendant in said action that affiant be present at the trial thereof and take an active part in the conduct of the defense on behalf of the defendant therein. That associated with said affiant in said litigation is said Martin W. Littleton who will also actively engage in the trial of said cause on behalf of said defendant. That the date of the trial of said action has on the request of the defendant, through said Littleton, been once continued in order that affiant and Littleton could attend to matters then pressing and urgent in the above entitled cause of the Uited States vs. Mammoth Oil Company, et al. and that thereafter and before the above entitled cause was set by this Honorable Court for October 7th, 1924, the above referred to cause of action in which affiant and Littleton represent the defendant Mexican Sinclair Petroleum Corporation was duly set for October 7th, 1924; that with due diligence repeated efforts have been made to have the litigation now pending in the Supreme Court of the State of New York, continued in order that affiant and said Littleton might attend at the trial on behalf of the defendant in the above entitled cause, but that they have been unable to obtain any continuance whatever; that in the trial of said cause of action now pending in the State Court of New York it is nec-

essary to bring witnesses from the Republic of Mexico to testify as to matters material in said cause of action, and that arrangements have been completed for the attendance of said witnesses. That in addition to the appearance by affiant as attorney for the defendant in said cause of action now pending in the Supreme Court of the State of New York, it
119 may be necessary for him to testify as a witness on behalf of said defendant.

2. Affiant further states that owing to conditions beyond the control of the defendant, it has not had sufficient time to properly prepare its defences to the Bill of Complaint filed herein in that certain witnesses, the testimony of whom, is deemed by affiant essential to the defense in the above entitled cause have been in Europe from a time prior to the date this cause of action was set for trial and have only recently returned and that with all due diligence counsel for defendants have not had an opportunity to properly prepare for presentation to this Honorable Court, the evidence to be adduced by said witnesses.

3. Affiant further states that on September 11, 1924, as counsel for defendant he received a notice signed by the Honorable Harold Shantz, American Consul at Toronto, Ontario, Canada, as special commissioner heretofore appointed by this Honorable Court to take depositions of a number of witnesses, on behalf of the plaintiff; that said depositions will be taken in Toronto on September 23rd and 24th and that the attendance on the taking of these depositions by counsel for the defendant at this time unduly interferes with counsel for defendant in preparing for trial to the extent of the time necessary for attendance upon the taking of said depositions, and that it will require at least six days in the taking thereof, and in going to and returning from the place of the taking thereof.

4. That the taking of depositions in the above entitled cause at Toronto, Canada, on September 23rd and 24th will make it necessary for the defendant to interview a
120 number of persons who have or may have knowledge of the facts which the plaintiff purports to develop by said witnesses through said depositions, and that counsel for the defendant will not have adequate time for such con-

sultation with said witnesses if the trial of this cause is to be commenced on the 7th of October, 1924.

Further affiant sayeth not.

G. T. STANFORD.

Subscribed and sworn to before me this 11th day of September, 1924.

RUTH COSTELLOE,

(Seal) Notary Public, Kings County No. 445. Kings County Register No. 5173. Certificate filed N. Y. County No. 331. New York County Register No. 5304.

Commission expires March 30, 1925.

Endorsed: Filed in the District Court on Sept. 17, 1924.

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121 (Order denying Motion of Mammoth Oil Co. for continuance.)

Application having been made by the defendant Mammoth Oil Company in the above entitled cause for a continuance of the final hearing heretofore fixed for October 7, 1924, to November 18, 1924, and a resistance to the application for said continuance having been filed herein and said matter having been duly presented to the court and the court having heard the arguments of counsel and being fully advised in the premises; It is hereby Ordered that said motion for continuance be and the same is hereby denied.

Dated September 17, 1924.

T. BLAKE KENNEDY,
Judge.

Endorsed: Filed in the District Court on Sept. 17, 1924.

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122 (Motion of Plaintiff for Continuance.)

Now, September 25, 1924, come Atlee Pomerene and Owen J. Roberts, of counsel for Plaintiff, and move the Court to continue the trial of the above mentioned cause, which has heretofore been set for trial October 7, 1924, to such date as this Honorable Court can assign for the trial of the same. The reason for this motion is that certain witnesses whose testimony counsel for the Plaintiff deem rele-

vant and important and whose testimony was to have been taken on September 23 and 24, 1924, under the order of this Court by Harold Shantz, Commissioner duly appointed for that purpose by this Court, refused to be sworn or to testify. Wherefore, it has become necessary for counsel to institute proceedings in the Province of Ontario to compel the giving of said testimony, which proceedings have been initiated. Counsel are advised by counsel in the Province of Ontario that said proceedings cannot be completed and the testimony taken in time to have the same returned to this Hon-
123 orable Court by October 7, 1924.

UNITED STATES OF AMERICA,
By Atlee Pomerene,
Owen J. Roberts.

United States of America, Southern District of New York.

State of New York,
County of New York—ss.

Atlee Pomerene and Owen J. Roberts, having been duly sworn according to law, depose and say that the facts set forth in the foregoing motion are just, true and correct to the best of their knowledge, information and belief.

ATLEE POMERENE,
OWEN J. ROBERTS.

Sworn to and subscribed before me this 25th day of September, 1924.

A. L. FJELD,
(Seal) Notary Public, Bronx County.. Clerk No. 135, Reg. No. 2625L. Certificate filed in New York Co. Clerk No. 622, Reg. No. 6025.

Commission expires March 30, 1926.

The undersigned do accept service of notice of the presentation of the foregoing motion at New York, September 25, 1924.

G. T. STANFORD,
MARTIN W. LITTLETON,
GEO. P. HOOVER,
Counsel for Defendant Mammoth Oil Company.

EDWARD H. CHANDLER,
Counsel for Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, Defendants.

Endorsed: Filed in the District Court on Sept. 25, 1924.

124 (Order granting Motion of Plaintiff for Continuance.)

Application having been made by the plaintiff in the above entitled cause for a continuance of the final hearing heretofore assigned for October 7, 1924, and said matter having been duly presented to the court by counsel for plaintiff and the reasons set forth in the motion appearing to the court to be good and sufficient and counsel for the defendants having appeared and offered no resistance to said motion, and the court being now fully advised in the premises, it is hereby Ordered that the said motion for continuance be and the same is hereby granted and that the final hearing in said cause be stricken from the assignment on October 7, A. D. 1924, and that said final hearing be and the same is hereby reassigned and set for hearing on the sixth day of January, A. D. 1925, at 10 o'clock in the forenoon.

Dated September 25, 1924.

T. BLAKE KENNEDY,
Judge.

Endorsements: No. 1431 Civil. United States of America, Pltf. vs. Mammoth Oil Company, a corporation, et al., Defts. Order of Continuance. Filed Sept. 25, 1924. Charles J. Ohnhaus, Clerk.

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125 (Petition of Plaintiff to Appoint Commissioner to take Depositions of certain parties in Canada.)

To the Honorable T. Blake Kennedy, Judge of the said Court:

The petition of the United States of America respectfully represents:

1. That your petitioner is the plaintiff in the above entitled cause of action, which is now pending before your honorable Court.

2. That it is necessary to your petitioner's cause to take the testimony of Henry Smith Osler, Britton Osler, N. F. Strickland, Suneva Margaret Fordyce, Morley H. Breuls, Harold E. Boston and Louis Samuel; and that justice cannot be completely done in the above entitled cause without the testimony of said witnesses.

3. That the said witnesses are all citizens of the Dominion of Canada; and that they all reside within the Province of Ontario, which Province is more than one hundred miles from

Cheyenne, in the District of Wyoming, where the trial
126 of the above captioned cause is to be held.

4. That on, to-wit, September 4, 1924, your petitioner presented to your honorable Court its petition for a commission to be directed to the Honorable Harold Shantz, Consul of the United States at Toronto, Ontario, to take the testimony of said witnesses, and that upon proper cause shown, and after due notice and hearing, your honorable Court granted the prayer of said petition and ordered that a commission should issue; that the said commissioner proceeded to apply to the proper tribunal in the Province of Ontario for an order for the attendance of the witnesses before him, being the same witnesses as are above herein mentioned, and one other witness, O'Meara, and obtained such order; that the witnesses attended before the said commissioner, and said O'Meara did testify, but the other witnesses above-named refused to be sworn, and have since raised certain questions in the Courts of Ontario touching the authority under the law of that jurisdiction of the said Harold Shantz to act as commissioner and questions touching the applicability and constitutionality of the Act of Ontario cited in the petition heretofore filed in this honorable Court; that as to the witness O'Meara the commission heretofore issued can and will be executed in conformity with the order of Court heretofore made, but its execution is impeded and may be frustrated as to said other witnesses.

5. That it is of the greatest importance to the plaintiff that the testimony in question should be procured at the earliest possible moment, and that due to the delays incident to the questions raised by said witnesses plaintiff is advised, believes, and therefore avers that it should apply for
the issuance of another commission to the said Hon-
127 orable Harold Shantz, Consul for the United States at Toronto, Ontario, and to some other person who is a citizen and resident of the Province of Ontario, Dominion of Canada, as joint commissioners.

6. That the facts within the knowledge of the said witnesses whom it is desired to examine by commission will in the belief of solicitors for plaintiff disclose the passage of certain United States bonds between Harry F. Sinclair, named in the Bill of Complaint herein, and Albert B. Fall, also named in said Bill of Complaint; that these facts were not known at the time when the period prescribed by the Rules in Equity for the taking of depositions on behalf of plaintiff expired; that plaintiff has no other method to elicit the facts

from the said witnesses except by the taking of such commission and the execution of the same.

7. That a true copy of this petition has been duly served upon counsel of record for the defendants above named; and that due notice of the presentation of this petition was at that time given to said counsel.

8. That the said Honorable Harold Shantz is Consul of the United States at Toronto, Province of Ontario, Dominion of Canada, and that Gershom W. Mason, K. C. Barrister at Law, is a citizen and resident of the City of Toronto, Province of Ontario, Dominion of Canada, and both the said Honorable Harold Shantz and the said Gershom W. Mason, K. C. Barrister at Law, are persons who are not interested in the result of this litigation, and are persons of reputation and standing in said community and fully entitled to the trust and confidence of this honorable Court, and fully competent to act as special joint commissioners in said matter.

128 Wherefore, your petitioner prays that the said Honorable Harold Shantz, Consul of the United States at Toronto, Province of Ontario, Dominion of Canada, and the said Gershom W. Mason, K. C. Barrister at Law, of Toronto, Province of Ontario, Dominion of Canada, may be appointed special joint commissioners to take the depositions of the above named witnesses, at such place in the City of Toronto, Province of Ontario, Dominion of Canada, as they may appoint for that purpose, which said depositions to be by oral examination of counsel, who shall have leave to take the testimony of said witnesses by question and answer in the usual manner of direct, cross and redirect examination; the testimony given under such oral examination to be taken stenographically, to be reduced to writing, to be signed by the witnesses, and certified by the said special joint commissioners, respectively; said depositions to be transmitted to the Clerk of this honorable Court at the City of Cheyenne, State of Wyoming, in the manner provided by the Statutes of the United States in such case made and provided; the said special joint commissioners to have authority to apply to the proper Court or Judge of the Province of Ontario, Dominion of Canada, for an order for the examination of the said witnesses and the production of documents, writings, or things; and ten days' notice, in writing, of the time and place for the taking of the depositions of the said witnesses to be given by the said special joint commissioners or counsel for

the plaintiff to the defendants, or their respective counsel.

129 And your petitioner will ever pray.

UNITED STATES OF AMERICA,
Petitioner.

By Atlee Pomerene
Owen J. Roberts
United States Special Counsel.

Albert D. Walton
United States District Attorney.

United States of America,
District of Wyoming,
The State of Wyoming,
County of Laramie—ss.

Albert D. Walton, being first duly sworn according to law, deposes and says that he is of counsel for the above named petitioner; that he has read the foregoing petition and knows its contents; and that so far as the matters therein stated are of his own knowledge the same are true, and that as to all matters therein stated the same are true to the best of his knowledge, information and belief.

ALBERT D. WALTON

Sworn to and subscribed before me this 16th day of October, A. D. 1924.

(Seal) CHARLES J. OHNHAUS
Clerk of the U. S. District Court
District of Wyoming.

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130 (Order granting Petition to Appoint Commissioner to take Depositions.)

And Now, to-wit: October 18th, A. D. 1924, upon consideration of the foregoing petition, and upon motion of Albert D. Walton, Esq., of counsel for the petitioner, it is Ordered and Decreed that the prayer of said petition be granted, and that the Honorable Harold Shantz, Consul of the United States at Toronto, Province of Ontario, Dominion of Canada, and Gershom W. Mason, K. C. Barrister at Law, of Toronto, Province of Ontario, Dominion of Canada, be, and they hereby are, appointed special joint commissioners to take the depositions of Henry Smith Osler, Britton Osler, N. E.

Strickland, Suneva Margaret Fordyce, Morley H. Breuls, Harold E. Boston and Louis Samuel, at such place as they may appoint within the City of Toronto, Province of Ontario, Dominion of Canada; the said depositions to be by oral examination of counsel, who shall have leave to take the testimony of the said witnesses by question and answer in the usual manner of direct, cross and redirect examination; the testimony given under such oral examination to be taken stenographically, to be reduced to writing, to be signed by the witnesses, and certified by the special joint commissioners, respectively, unless otherwise mutually agreed upon by counsel for all parties; the said depositions to be transmitted to the Clerk of this Court at the City of Cheyenne, State of Wyoming, in the manner prescribed by the Statutes of the United States in such case made and provided; the said special joint commissioners to have authority to apply to the proper Court or Judge in the Province of Ontario, Dominion of Canada, for an order for the examination of any and all of the above named witnesses, and for the production
131 of documents, writings, or things; the said special joint commissioners or counsel for plaintiff to give ten days' notice in writing of the time and place for the taking of the depositions of the said witnesses to the defendants, or to their respective counsel.

It is Further Ordered and Decreed that the decree and commission made, entered and issued on the 5th day of September, A. D. 1924, is hereby continued in force as to witness O'Meara and his testimony, but in all other respects is hereby revoked, said revocation, however, is not to become effective as to any other witness named herein until service of process has been had upon him hereunder.

Dated this 18th day of October, A. D. 1924.

By the Court:

T. BLAKE KENNEDY
Judge.

Endorsements: In Equity, No. 1431. In the District Court of the United States for the District of Wyoming. United States of America, Plaintiff, vs. Mammoth Oil Company, a corporation of the State of Delaware; et al., Defendants. Petition for a Commission. Filed Oct. 18, 1924. Charles J. Ohnhaus, Clerk. Albert D. Walton, United States Attorney for the District of Wyoming.

132 (Affidavit of Atlee Pomerene and Owen J. Roberts requesting Continuance.)

United States of America,
District of Columbia—ss.

Atlee Pomerene and Owen J. Roberts having been duly sworn according to law do depose and say:

1. That they are of counsel for plaintiff in the above cause;

2. That during the summer and autumn of 1924 certain information came to them, leading them to the belief that pursuant to the conspiracy alleged in the bill of complaint herein certain United States bonds had been delivered to Albert B. Fall by Harry F. Sinclair or someone acting on his behalf.

3. That said information was not obtainable within the time allowed for taking depositions on behalf of plaintiff, though deponents prosecuted their investigation with all diligence.

4. That upon the application of counsel for plaintiff your honorable Court issued a commission to take the testimony of certain witnesses in Toronto, Canada, which witnesses, or some of them, deponents believe can give relevant evidence connecting said Harry F. Sinclair with the delivery of said bonds to Albert B. Fall.

5. That said witnesses appeared before the Commissioner appointed by your honorable Court but refused to be sworn or testify; whereupon contempt proceedings were
133 brought against them to compel them so to testify.

6. That at said time this cause was set for trial October 7, 1924, and because of the necessity to obtain said testimony, as represented to this Court, said cause was continued and fixed for trial January 6, 1925.

7. That said witnesses then for the first time made the contention that the provisions of the Ontario evidence act, under which they had been ordered to appear before the Commissioner and give evidence, were void as being ultra vires the Provincial Legislature,—and this despite the fact that the evidence act of the Dominion of Canada contains similar provisions.

8. That deponents, believing that said contention was made solely for purposes of delay, and being advised that

however little merit it might have, appeals from court to court founded upon such contention might consume months, applied to your honorable Court for a new commission under the laws of Canada, thus obviating and removing said cause of objection.

9. That said new commission was issued, and an order obtained from the Supreme Court of Ontario for the attendance of said witnesses; that pursuant to said order and to notice duly given by the Commissioners said witnesses appeared before the Commissioners in Toronto on November 25, 1924, and were severally sworn, but refused to answer many questions put to them, and which the Commissioners ruled they should answer. (One of said Commissioners is a Toronto barrister of standing and experience).

10. That contempt proceedings were promptly instituted against said witnesses in the Supreme Court of Ontario, and on December 13, 1924, Mr. Justice Riddell, rendered a judgment in said proceedings adjudging that the witnesses must answer all of said questions.

11. That deponents are advised by their solicitors in Toronto that said witnesses propose to appeal from said judgment to the Appellate Division of the Supreme Court of Ontario; and that such appeal cannot be heard at the
134 earliest before the middle of January, 1925; thus requiring the adjournment of the hearings before the Commissioners beyond that time.

12. That in said contempt proceedings deponents filed their affidavits touching certain facts and information obtained by them. Deponents attach hereto a true copy of said affidavit, and ask that it be taken as a part of this affidavit; and aver the facts therein set forth to be true.

13. That in September 1924 deponents learned that one James E. O'Neill and one H. M. Blackmer had information and could give testimony vital to the issues in this cause and having to do particularly with the Continental Trading Company, Ltd., and the possession and delivery of the United States bonds delivered to said Albert B. Fall; that deponents made inquiry as to the whereabouts of said persons, and only about December 1, 1924, located them in France.

14. That deponents at once communicated to them through official channels that the United States desired their presence for the trial of this cause, and that the reply of O'Neill was that his health would not permit of his return to the

United States and the reply of Blackmer was that he could not state whether his engagements would permit of his return, but that he would advise later as to this. Deponents have since been informed that Blackmer states his counsel advises him that an application is to be made for postponement of the trial and his final decision with respect to request for his return to America for the purpose of testifying will not be made until the results of the aforesaid motion are known.

15. That it is essential to plaintiff's case that the evidence of these two witnesses, as well as the other evidence above referred to, be obtained and counsel for plaintiff are about to apply to this honorable Court for such orders as may be necessary to procure the same.

16. That as a result of certain facts disclosed to deponents in October 1924, deponents are making a further investigation which they believe will disclose facts and documentary proofs which are vital to plaintiff's case; and that such investigation cannot be completed by January 6, 1925.

ATLEE POMERENE
OWEN J. ROBERTS

Sworn to and subscribed before me this 16th day of December, 1924.

WM. LESLIE COOMBS
(Seal) Notary Public in and for the District of Columbia.

In the Supreme Court of Ontario High Court Division

In the Matter of the Evidence Act, being Revised Statutes of Ontario, Chapter 76, Section 50, and in the Matter of an action in the District Court of the United States for the District of Wyoming.

United States of America, Plaintiff,
No. 1431. vs. In Equity.
Mammoth Oil Company, a Corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a Corporation of the State of Delaware; and Sinclair Pipe Line Company, a Corporation of the State of Maine, **Defendants**.

We, Atlee Pomerene of Cleveland, Ohio, and Owen J. Roberts of Philadelphia, Pennsylvania, United States of America, Counsellors at Law, make oath and say—

1. That we are and have been for upwards of twenty years practicing attorneys and counsellors at Law duly admitted to practice in the Courts of the United States as well as in the State Courts of our respective States.

2. That we are special counsel to the United States in the above captioned case of the United States vs. Mammoth Oil Company et al by appointment of Calvin Coolidge, President of the United States, made by and with the advice and consent of the Senate of the United States pursuant to a joint resolution authorizing such appointment so to be made, which resolution was adopted by practically a unanimous vote of both Houses of the Congress of the United
137 States and was approved by the President; February 8th, 1924.

3. That acting under such appointment and as such special counsel we initiated a proceeding in equity on behalf of the United States against the Mammoth Oil Company et al, in the District Court of the United States for the District of Wyoming, which is the case mentioned above in the caption hereof; that said case is now pending and has been set for trial October 7th, 1924; that true copies of the bill in equity and the answer of the Mammoth Oil Company thereto are now produced marked Exhibit "A" hereto.

3. That the said District Court of the United States for the District of Wyoming is a Court of competent jurisdiction and now rightfully has jurisdiction both of the subject matter of said case and of the parties thereto and all parties therein have appeared by counsel and pleaded to the merits.

4. That as appears by said pleadings the action is to set aside a certain contract of lease for certain public lands of the Government of the United States of the extent of approximately 9300 acres and of great value, on the ground inter alia that such lease contract was entered into and procured as a result of fraudulent practices and a fraudulent conspiracy between one Albert B. Fall, then Secretary of the Interior of the United States, and one H. F. Sinclair, then acting in that behalf for the Mammoth Oil Company, one of the defendants in this cause.

5. That in the course of said proceeding and upon motion of counsel for plaintiff after notice to counsel for defendant

and a hearing and on proper cause shown and over the objection of counsel for the defendant, Mammoth Oil Company, said District Court of Wyoming, pursuant to the Statutes of the United States in such case made and provided, granted an order, a duly exemplified copy whereof is now produced marked Exhibit "B" thereto. Said order was for the
138 taking of the depositions of certain witnesses in the Province of Ontario.

6. That on September 15th, 1924, upon application duly made under Section 50 of the Evidence Act, and after notice to counsel for said witnesses (except the witness O'Meara) an order was duly made by the Honorable Mr. Justice Wright for the taking of said depositions, and the attendance of the said witnesses before the Commissioner named in the order, and the production of certain papers and documents. We are informed by counsel for plaintiff in Ontario, and believe that counsel for said witnesses (except the witness O'Meara) was present and opposed the motion, and that said order as to its terms was settled in conformity with certain requests made by counsel for the said witnesses. Said order, and the affidavit of Harold Shantz in support thereof, is now produced marked Exhibit "C" hereto.

7. That said order made by the District Court of the United States for the District of Wyoming is unappealed from and in our opinion is not an appealable order; and that no motion has been made to set aside the aforesaid order of the Honorable Mr. Justice Wright dated the 15th day of September, A. D. 1924.

8. That we are informed and believe that the said order so made by the Honorable Mr. Justice Wright was duly served by registered mail on all the witnesses (except the witness O'Meara) as directed by the said order and on September 23rd, 1924, at ten o'clock A. M. all of the witnesses commanded then to appear did appear before the Honorable Harold Shantz, the Commisisoner named in the order except Britton Osler, Esquire, and Harold E. Boston, one of whom was out of the City, and the other of whom was ill and confined to the hospital; and except the witness
139 O'Meara; that said witnesses were also represented by counsel who was the same counsel whom we are informed appeared at the hearing of application for the order; that said witnesses made no objection to the regularity of service; that now produced and shown to us marked Exhibit "D" hereto is the certified copy of the proceedings on the said commission on Tuesday, September 23rd, 1924.

9. That during the course of preparation for the trial of said action in the said District Court of Wyoming we have obtained evidence and proofs which we believe will show;

(a) That at about the time of the making of said lease contract set forth in said bill in equity said Albert B. Fall, Secretary of the Interior of the United States, came into possession of certain bonds of the United States known as First $3\frac{1}{2}$% Liberty Loan Bonds.

(b) That said bonds just prior to their possession by the said Fall were purchased and held by the Dominion Bank, New York Agency, said Dominion Bank being a corporation under the laws of the Dominion of Canada.

(c) That said bonds were purchased by the said bank for the account of a limited company duly authorized and existing under the laws of the Dominion of Canada known as Continental Trading Company Limited, and were so purchased at the special instance and request of H. S. Osler, one of the witnesses directed to be examined by the said order of the Honorable Mr. Justice Wright, acting in that behalf as President of the said Continental Trading Company Limited.

(d) That at the like instance and request of the said H. S. Osler, as such President, said bonds amongst others were delivered to the said H. S. Osler in person on or about May 8th, 1922.

(e) That by the said H. S. Osler or some officer or
140 agent of the said Continental Trading Company Limited (which will hereinafter for convenience be described as "Continental") said bonds were distributed to stock holders and holders of stock warrants of said Continental.

(f) That all of the witnesses mentioned in the order of the Honorable Mr. Justice Wright (except the witness O'Meara) were or are directors and or officers of said Continental.

(g) That the said Continental was organized in 1921 and immediately thereafter entered into a certain written contract dated November 17th, 1921, to purchase crude oil from certain corporations, viz., Humphreys Texas Company and Humphreys Mexia Company, which owned certain oil wells in the State of Texas, U. S. A., if, as and when the said crude oil should run from the wells, up to a total of 33,333,333 bar-

rels and to pay for the same One Dollar and fifty cents per barrel.

(h) That performance of said contract by the Continental was in writing guaranteed to the vendors of the said oil by Sinclair Crude Oil Purchasing Company, a corporation, and Prairie Oil and Gas Company, a corporation, (hearinafter for convenience referred to as "Sinclair Crude" and "Prairie" respectively); that on the same day on which said contract was made Continental by a written contract bearing that date resold said 33,333,333 barrels of crude oil to Sinclair Crude and Prairie jointly at an advance, which by the terms of the contract was in no case to be less than 25c per barrel, and by the same contract Sinclair Crude and Prairie things in connection with the taking, storing and shipment of agreed and undertook to do and perform all the matters and the said oil which Continental had undertaken with its vendors, and also to indemnify and save harmless Continental of and from any loss or damage by reason of Continental
141 having entered into the first mentioned contract with its vendors, and the difference between the purchase price and the sale price of said barrels of oil under the terms of the said two contracts was not to be less than $8,333,333.33; that under the terms of the said two contracts Continental had no matter or thing to perform or do (all of its covenants being assumed by its vendees, Sinclair Crude and Prairie) save and except receiving the payments from its vendees and making the payments to its vendors, and taking the profits shown by the difference in price of the two contracts.

(j) That between January 1st, 1922, and May 26th, 1923, in excess of 8,700,000 barrels of crude oil were delivered by the vendors of Continental direct to Sinclair Crude and Prairie its vendees, were paid for by the said vendees to Continental, and were paid for by Continental to its vendors, thus giving a profit to Continental in excess of $2,000,000, on the mere technical purchase and resale of the oil, and without any responsibility or obligation on the part of Continental; that the contracts were so arranged that Continental received its payments for the oil on the tenth of each month and paid its vendors on the fifteenth of the same month in which they were respectively received; and that on May 26th, 1923, there remained approximately 25,000,000 barrels of oil to run and deliver under said contracts, which if taken would have shown a profit to Continental of approximately $8,000,000.; that, except as hereinafter in paragraph (n) stated, the only business

conducted by Continental during the period mentioned was the receipt of moneys from its vendeess and the payment of moneys to its vendors and that the profits shown by these transactions were from time to time invested by the said Dominion Bank by direction of the said H. S. Osler, as President of Continental, in First 3½% Liberty Loan Bonds of the United States, which bonds, as above set forth,
142 were then held by the Dominion Bank subject to the order of said H. S. Osler as President, as aforesaid; that said bonds were from time to time delivered to the said H. S. Osler and by him or under his direction distributed to stock holders of Continental or holders of its stock warrants as dividends.

(k) That 50% of the capital stock of Sinclair Crude is owned by Sinclair Consolidated Oil Corporation, a corporation of which H. F. Sinclair is an officer and stockholder, and the remaining 50% of said stock is owned by the Standard Oil Company of Indiana. That the former Company is a large stock holder of Mammoth Oil Company, one of the defendants in the said cause, as is also H. F. Sinclair. That about 90% of the stock of Midwest Refining Company, an oil producing corporation, is owned and controlled by the Standard Oil Company of Indiana. That one H. M. Blackmer is President of the said Midwest Refining Company, and that the said H. S. Osler was interested as a stock holder, director or officer in the Midwest Refining Company or said Standard Oil Company of Indiana or both.

(l) That the President of the Vendor Companies above mentioned known as Humphreys Texas Company and Humphreys Mexia Company is one A. E. Humphreys, who in the autumn and winter of 1921 was willing and desirous to sell one-half of the crude oil produced by the said two Companies, and to that end the said Humphreys had in the autumn of 1921 negotiations with said Blackmer and with Robert W. Stewart, Chairman of the Board of Directors of Standard Oil Company of Indiana and with the said H. F. Sinclair, which negotiations did not eventuate in a contract; that subsequently in November, 1921, the said Humphreys was requested to meet said Blackmer in New York to discuss such a contract, that said Humphreys and said Blackmer negotiated; that said Humphreys' understanding was that Blackmer was negotiating on behalf of what was
143 termed "Standard Oil Company of Indiana Interests" which included Sinclair Crude; that at said conference in New York with Blackmer said Humphreys agreed

to sell one-half his production up to 30,000,000 barrels to Blackmer's principals; thereupon Blackmer requested Humphreys to come later to a room in the Vanderbilt Hotel, New York, that Humphreys went to the Vanderbilt Hotel at the time appointed and there found said Blackmer, said H. S. Osler, said Stewart, said Sinclair and James E. O'Neill, President of Prairie; that some one said persons stated that the proposed sale contract should be made by Humphreys with Continental; that Humphreys had never heard of Continental and stated he would make the contract with it only if he received some guarantee of performance thereof by Continental; that said Sinclair and said O'Neil stated that Sinclair Crude and Prairie would in writing guarantee such performance; and that Humphreys then agreed to make the contract with Continental.

(m) That at the said conference the only person present who purported to represent and act for Continental was said H. S. Osler, who purported then and there to act as its President and to speak for it; the only persons present purporting to represent and act on behalf of Sinclair Crude were said Sinclair and said Stewart; the only person who purported to represent and act for Prairie was said O'Neil. The only other person present not representing or interested with Humphreys as vendor was said Blackmer; at said conference it was agreed that the amount of oil to be sold to Continental should be 33,333,333 barrels instead of 30,000,000 barrels. At said conference said Humphreys was asked whether he would execute an additional contract whereby he would sell one-half of the production of the Humphreys Companies to Sinclair Crude and Prairie jointly so long as oil should run at the posted field price, said contract to come into
144 effect and be operative after the delivery of the full 33,333,333 barrels covered by said first contract. Humphreys so agreed and thereupon the said two contracts were drawn up and were then or subsequently executed, both under date of November 17th, 1921, by the respective officers of the respective corporations. Said Humphreys had no further or other interest in the matter except the sale of his oil at a price which he deemed proper and adequate, had no connection with Continental and has had none at any time; the same is true of the Companies which he represented at said conference. That immediately the contract had been closed guaranteed in writing by Sinclair Crude and Prairie, and

the additional contract for Humphreys additional production had been made with Sinclair Crude and Prairie, Humphreys left the conference; and immediately thereafter Continental entered into a written contract of the same date with Sinclair Crude and Prairie turning over the oil just bought from Humphreys' Companies at the profit above stated and under the terms and conditions above set out.

(n) That about December 28th, 1921, Continental acting through said Osler purchased and took an assignment of a contract made by Western Oil Fields Corporation whereby Continental became entitled to delivery of 3,000,000 barrels of crude oil to be produced by Western Oil Fields Corporation at a price of $1.20 per barrel; that on the same day Continental resold said oil to Sinclair Crude and Prairie at a price of $1.45 per barrel, that we do not know the exact amount of oil delivered under this contract but all of it was taken direct from the producer Western Oil Fields Corporation by Sinclair Crude and Prairie and paid for at said advanced price of $1.45 to Continental, Continental in turn paying for it to its vendor at the rate of $1.20 per barrel;
145 that the profit so accruing was invested in United States Liberty Bonds of the same kind as above mentioned which bonds were distributed as dividends by the officers of Continental.

(o) That on May 26th, 1923 Continental assigned its said two contracts, one with the Humphreys Companies and the other with the Western Oil Fields Corporation, to Sinclair Crude and Prairie jointly for a price of $400,000, one-half of which was paid by Sinclair Crude and the other half by Prairie. The said $400,000 was likewise invested in similar Liberty Bonds and said bonds were distributed as dividends by Continental or its officers. Since that date over 8,000,000 barrels of Crude oil have run and been delivered under the Humphreys contract to Sinclair Crude and Prairie as assignees of said contract but at the original price named in the Humphreys contract of $1.50 per barrel, and not at the Continental price of $1.75.

(p) That after said assignment Continental went out of business and that in January or February 1924, all of its records, books or papers were destroyed. The said Osler not only was a stock holder or stock warrant holder in said Continental but was President and chief executive officer of Continental; that all of the acts which he did, as above set forth, or ordered to be done, were done by him as such Pre-

sident of the said Company. The facts within the knowledge of the witness Suneva M. Fordyce and the other witnesses mentioned in said order (except the witness O'Meara) are within their knowledge as officers and/or directors of Continental. The correspondence of Continental was largely conducted by the witness Fordyce and the records kept largely by her under the direction of said H. S. Osler as President.

(q) That on April 13th, 1922, three brokerage firms in New York sold and delivered to the Dominion Bank $250,000 par value of said bonds; that on April 17th one of said firms sold and delivered to said bank $50,000 par value of said bonds. We have ascertained the serial numbers of
146 all of said bonds. Said Bank while showing said transactions on its books, has no record of said numbers. Said Bank, however, has records showing the delivery by it of said same $300,000, of bonds on May 8th 1922, to said H. S. Osler as President of Continental; that said bonds so delivered were taken by said H. S. Osler in order to divide amongst the stockholders of Continental as dividends; that he did so divide them, and that they were delivered against stock warrant coupons; that this was done after May 8th, 1922; that on or about June 15th, 1922, $90,000 of said $300,000 bonds, identified by their numbers, were in the possession of the said Albert B. Fall, the person who it is alleged in this case conspired with said Sinclair to defraud the United States in the matter of said lease, which said lease was executed in the month of April, 1922. That now produced and shown to us marked Exhibit "E" to this affidavit is a photostatic copy of the ledger account of said Continental with said Dominion Bank, New York Agency, a like copy of the bond account of Continental with the same agency, a like copy of the personal bond account of said H. S. Osler with said Agency, and a like copy of a letter of said H. S. Osler to said Agency ordering the purchase of said $300,000. of bonds.

10. We are advised and verily believe that the statements contained in the several clauses of paragraph nine hereof are true. The information contained in the said clause was obtained by us from the following sources:

Clause (a). From Thomas B. Foster, of San Francisco, California, an investigator employed by us to investigate the matters covered by the said clauses.

Clauses (b, c, d & q.) From M. P. Bolan of New York, an investigator employed by us to investigate the matters referred to in the said clauses and from a personal inspection by us of the books and records of the Dominion Bank, New York Agency, in the City of New York.

147 Clause (e) From statements made to us by Mr. H. S. Osler.

Clause (f) From the record of the corporation of the said Company in the Department of the Secretary of State at Ottawa.

Clause (g & h). From a perusal of the original contracts referred to in the said clauses, which were produced for our inspection by the parties in whose custody they now are, to wit: Henry L. Phillipps, Sinclair Crude Oil Purchasing Company, Samuel Fitzpatrick Chairman of Board Prairie Oil & Gas Company.

Clause (j) By the inspection of the contracts referred to in clauses (g) and (h), and an inspection of the records of the said companies and of the Dominion Bank, New York Agency, in the City of New York, and as to the business of the said Continental Company and the delivery of the bonds by it to the stock holders of the Continental Company or the holders of its stock warrants from Mr. H. S. Osler.

Clause (k) From governmental reports as well as from statements of officers and officials of the said Companies, including Mr. H. S. Osler, the President of the Continental Company.

Clause (l). From statements made to us by A. E. Humphreys of Denver, Colorado, and from an inspection of the contracts referred to, which were produced for our inspection by the persons now having them in custody.

Clause (m). From statements made to us by A. E. Humphreys and also from an inspection of the original contracts produced to us by the parties having custody of the same.

Clause (n). From statements made to us by Henry L. Phillipps, President of Sinclair Crude Oil Purchasing Company, and by an inspection of the contracts and corporate records of the Companies concerned which were produced to us by the officers having custody of them.

148 Clause (o). By an inspection of the written assignments and the records of the Companies concerned which were produced to us by their respective officers.

Clause (p). From statements made to us by Mr. H. S. Osler.

11. That it is relevant and important to the plaintiff to show in said proceedings in the District Court of Wyoming, who were the stock holders or holders of stock warrants in said Continental; to whom said bonds were delivered as dividends or delivered upon the order of the parties entitled to said bonds as said dividends; that H. S. Osler and said Suneva M. Fordyce and perhaps others of said witnesses have knowledge and means of knowledge which will disclose the persons to whom the said bonds were given; that the proof of delivery of said bonds and the persons to whom they were given is an important portion of the plaintiff's proofs in said action in order to show the devolution of said bonds to said Albert B. Fall in whose possession they were within a very brief period after they came into the possession of the said H. S. Osler and were by him delivered out.

(Sgd.) ATLEE POMERENE
(Sgd.) OWEN J. ROBERTS.

Sworn before me by both the said deponents, at the City of Toronto in the County of York this 24th day of September, A. D. 1924.

(Sgd.) R. G. MEECH
A Commissioner &c.

Endoresments: No. 1431 Civil. In the District Court of the United States for the District of Wyoming. In Equity No. 1431. United States of America, Plaintiff v. Mammoth Oil Company, et al, Defendants. Motion for Continuance. Atlee Pomerene Owen J. Roberts Counsel for Plaintiff. Filed Dec. 20, 1924. Charles J. Ohnhaus, Clerk.

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841 (Opinion of District Court upon granting of Motion of Plaintiff for Continuance.)

Atlee Pomerene, Special Counsel, and Albert D. Walton, U. S. Attorney, for Plaintiff.

John W. Lacey, Martin W. Littleton and Geo. P. Hoover, for Defendant Mammoth Oil Company.

Decided December 26, 1924.

Memorandum of Judge.

Kennedy, Judge.

This cause is again before the court upon a motion of plaintiff for a continuance of the time set for final hearing. Such

final hearing was originally assigned for October 7, 1924. Previous to that time, upon application of the plaintiff, a commission had been issued upon an order of the court to a Commissioner in the Dominion of Canada to take the deposition of witnesses residing there. An attempt was made to secure the testimony desired. The plaintiff was met with a challenge to the sufficiency of the law of the Province in the Dominion under which the depositions were sought. As this developed a question upon which counsel for
842 plaintiff were in doubt, it was deemed advisiable to proceed under another statute of a similar nature enacted by the general government of the Dominon. The time of final hearing then being near, application was made for a continuance by the Government for the purpose of proceding to secure the testimony in Canada under such other statute. This court at that time deemed the showing sufficient to justify such continuance and the cause was thereupon continued and set for final hearing on January 6, 1925.

It now develops that in attempting to take the testimony of the witnesses in Canada, some of those witnesses have refused to answer certain questions upon the ground that the information sought comes within the scope and purview of privileged and confidential communications between attorney and client, that the Commissioner had directed the witnesses to answer certain questions, that said witnesses have still refused, that the matter has been carried to a Canadian court, where the position of the Commissioner in directing witnesses to so answer has been sustained. It further develops from the showing presented to this court, that the matter involving the refusal of witnesses to answer questions before the Commissioner has been carried by appeal or other appropriate proceedings to an appellate court of the Dominion or the Province in which the deposition was taken and that said matter can not be presented or heard before said appellate tribunal until a short time after the first of January 1925. Upon this showing, accompanied by the record of that part of the depositions taken before the Commissioner in Canada, counsel for the plaintiff now ask a further continuance.

Another ground for the motion for a continuance is, that the plaintiff has been unable to secure the testimony of one James E. O'Neill and one H. M. Blackmer, whom it is expected will give testimony relevant to the issues in the cause, on account of their being in a foreign country.

843 Still another ground of the motion for continuance is that counsel for the plaintiff have received the disclosure of other facts which they believe will develop proofs vital to plaintiff's cause.

It need only be said in relation to the last-mentioned ground, that it affords no basis whatever for a continuance.

As to the witnesses O'Neill and Blackmer, the rule is not satisfied in that there is no attempt to disclose in a specific way what it is expected these witnesses would testify to if their testimony were secured and therefore, under the rule, this should not be held sufficient to justify the court in granting the motion.

As to the showing concerning the testimony of the witnesses in Canada, a different and somewhat difficult and complicated situation presents itself. The question of the materiality, relevancy and competency of the testimony sought is eventually of course determinable by this court. The proceedings before the Commissioner discloses that such questions of materiality, relevancy and competency are reserved by stipulation of the parties to be determined by the court upon the trial. In addition to this, manifestly, the court would be in no position at this time and upon a motion for a continuance, to determine questions so vital to the merits of the controversy.

In the consideration of this phase of the case from the standpoint of a law suit, full faith and credit must be given to the theory of the plaintiff and the attempt of counsel to secure testimony through authorized channels to establish that theory as set forth in its bill. Only in a general way can the court be familiar at this time with the general purposes of plaintiff's cause and defendants' defenses to the same. From this casual observation this court assumes that a certain lease between the plain-
844 tiff and defendant is challenged and sought to set aside, first upon the ground that there was no law authorizing it, and second upon the ground that it originated in and was consummated by a conspiracy on the part of certain officials of the defendant companies and an official of the United States Government having the matter of leasing certain government lands then in hand. Upon this latter theory, the evidence sought from the Canadian witnesses would purport to reveal certain transactions between officials of the defendant companies

and the government official, which would tend to show the indirect distribution of moneys or securities between the former and the latter, following the consummation of the lease in controversy and thereby tending to support the charge of conspiracy.

The main difficulty in disposing of this motion is that, while this court must determine the materiality, relevancy or competency of the testimony sought of the witnesses in Canada, that matter can not now be determined by this court, and as to the matter of right of those witnesses to refuse to answer the questions asked of them by counsel for plaintiff upon the ground that the answers would result in the disclosure of privileged and confidential communications, this court can not determine, for the reason that the witnesses are beyond the jurisdiction of the court. While this court could determine that question were the witnesses before it or within its jurisdiction and punish for contempt upon refusal, should it find the questions should be answered, a determination to that effect by this court now would be futile under the circumstances, and therefore it must be left to the courts of the jurisdiction of the country in which the testimony is sought. While the nature of the evidence sought would seem to support the theory of conspiracy contended for by the plaintiff, the admissibility of the specific testimony of course can not be passed upon
845 at this time and must be reserved by this court for its determination upon the trial.

Considering it therefore from the very general standpoint, that the testimony so sought from Canadian witnesses tends to support the theory of plaintiff's cause of action, this court should consider whether or not it forms a basis for granting a motion of continuance of the trial.

From the showing made, counsel for the Government appear to have used reasonable diligence in attempting to secure this testimony but have been met with unusual and unexpected obstacles and therefore can not be charged with lack of diligence.

Counsel for defendants maintain that the depositions already taken disclose that the Canadian witnesses have revealed everything that is material to plaintiff's cause within their recollection.

An examination of the depositions discloses that as to many questions asked these witnesses refuse to answer, after

being directed by the Commissioner, and that a Canadian court has sustained the Commissioner in directing such answer. Furthermore, this court does not construe the depositions as going so far as to demonstrate an exhaustion of the witnesses' knowledge or recollection on material points. While the point involved is somewhat complicated, this court is of the opinion that the matter of whether the witnesses should be required to answer the questions propounded by counsel for the Government should, as before stated, be decided by the Canadian courts, as no decision of this court upon that point would be binding or persuasive upon the Canadian courts, which will proceed according to their own interpretation of the law, in the matter of compelling witnesses to answer questions, when refusal is based upon the ground of privileged and confidential communications. The conclusion is therefore that the showing of plaintiff, in the light of the unusual situation, should be held to be sufficient to sustain the motion.

846 The court is not unmindful of the fact, that the defendants in this case have rights and that their theories are entitled to as full faith and credit as those of the plaintiff. The property in controversy is in the hands of receivers of this court. The operations in connection with the property are curtailed in a marked degree, which the defendants insist are resulting in great damage to the property and the interests of the defendants, in the event they succeed in the suit. Pressing major questions involved are being constantly delayed by the court, until the matter can be heard fully and upon its merits. The issues have been made up in the cause for a comparatively long period of time, and considering its nature, a reasonably expeditious hearing should be had. The court is therefore not inclined to grant a long continuance, but only for such time as would give the plaintiff reasonable opportunity to proceed with diligence and dispatch in attempting to secure the testimony of the Canadian witnesses.

The motion for a continuance will therefore be granted and the final hearing in said cause reset for March 9, 1925, at ten o'clock a. m., and an order entered accordingly.

Endorsed: Filed in the District Court on Dec. 26, 1924.

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149 Order Granting Motion for Continuance and Resetting Final Hearing.

This cause having heretofore come to be heard on motion for continuance herein, and having been argued by solicitors

for the parties hereto, and having been taken under advisement by the Court:

And thereupon, upon consideration thereof, It is Now Ordered by the Court that said motion for continuance herein be, and the same is hereby, granted, and the final hearing of this cause is hereby reset for Monday, March 9th, A. D. 1925, at ten o'clock in the forenoon.

Dated this 26th day of December, A. D. 1924.

T. BLAKE KENNEDY,
Judge.

Endorsed: Filed in the District Court on Dec. 26, 1924.

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150 (Motion of Plaintiff for further Continuance.)

Now come Atlee Pomerene and Owen J. Roberts, counsel for plaintiff, and move the Court to continue the trial of the above captioned cause, which has heretofore been set for trial March 9, 1925, for a period of sixty days, or to such date as this Honorable Court may assign for the trial of the same.

The reasons for this motion are that certain witnesses, to wit, Britton Osler, N. E. Strickland, Morley H. Breuls, Harold E. Boston, Louis Samuel, Suneva Margaret Fordyce, and H. S. Osler, whose testimony was to have been taken November 25, 1924, under the order of this Court, by Harold Shantz and Gershon W. Mason, Commissioners duly appointed for that purpose by this Court, refused to answer certain questions put to them on their said examination; and thereafter the said counsel for the plaintiff caused to be instituted proceedings in the Province of Ontario to compel the giving of said testimony; that thereafter, a hearing was had on said proceedings before the Honorable Mr. Justice Riddell of the Superior Court of the Province of Ontario; and thereafter, to wit, on the 13th day of December, 1924, the Honorable Mr. Justice Riddell announced his decision, requiring the
151 said witnesses, and each of them, to answer said questions asked of them before the said Commissioners.

The counsel for the plaintiff further say that the said witnesses, and each of them, appealed from the said decision of the Honorable Mr. Justice Riddell to the Appellate Division of the Superior Court of the Province of Ontario, and that the solicitors representing the said counsel and the Government of the United States of America, pressed the said case for prompt hearing, and that said cause was heard by the

said Appellate Division of the Superior Court of the Province of Ontario, at the earliest day consistent with the condition of their court docket, to-wit, on February 9th and February 11th, 1925, and that said case was taken under advisement and a decision is not expected therein until on or after February 23rd; that by reason of said appeal, it was necessary to adjourn the taking of said depositions from time to time; that it was expected these depositions would be taken on the 20th of February, but the Commissioners were obliged to and did adjourn the taking thereof until February 27th.

Counsel further say that they are advised, through their solicitors, that the solicitors representing the witnesses who are now in Ontario have advised them to testify without further appeal if said decision of the Appellate Court is against them; that the most important of the witnesses, H. S. Osler, left Canada for Africa, while still under process to appear before the Commissioners named by this Honorable Court, after he had notice that contempt proceedings would be begun, and several days before they were heard.

A few days since, counsel have been advised, through their solicitors, by the solicitors of the said H. S. Osler, that he was then on his return home but was detained by illness in a hospital at Cairo, Egypt.

152 Counsel further say that the witnesses, other than H. S. Osler, were officers and directors of the Continental Trading Company, Limited, or clerks of the said company or its officers and directors, and that they have some knowledge of the business affairs, or many of the business affairs of said company; that said counsel believe, and therefore aver the fact to be, that their said evidence is material and relevant to the issues involved in this cause; that said counsel further believe that if their said testimony is taken, as it is expected to be taken, on February 27th, it is probable that the said testimony cannot be taken, transcribed, mailed and delivered to the Clerk of the Court, in Cheyenne, on or before March 9, 1925.

Counsel further say that in any event, it will be impossible for the said H. S. Osler to return from Cairo, Egypt, to Toronto, in time to have his depositions taken under said commission, and have them transcribed, mailed and delivered to the Clerk of the Court, at Cheyenne, on or before March 9, 1925.

Counsel further say that the said H. S. Osler was President of the Continental Trading Company, Limited, and as

such President, received for said company and its stock-warrant-holders, large blocks of bonds, a part of which, within a few days after their receipt by the said H. S. Osler, came into the possession of Albert B. Fall, formerly the Secretary of the Interior, or into the possession of others for him, and that said evidence is material and relevant.

153 Counsel further say that they expect to prove by the said H. S. Osler, and perhaps by other witnesses, the interest of the said H. S. Osler, James E. O'Neill, Harry F. Sinclair, Harry M. Blackmer, and Robert Stewart, in the stock-warrants of the said the Continental Trading Company, Limited, and they expect to show that large amounts of the bonds purchased by the Dominion Bank of Canada, (New York Branch), for the account of the Continental Trading Company, Limited, were delivered to the said H. S. Osler, and were by him distributed, or caused to be distributed, among the holders of the stock-warrants of the said Continental Trading Company, Limited, and that a large portion of said bonds went to each of said stock warrant-holders, and especially to Harry F. Sinclair, from whom the said Albert B. Fall received a substantial portion of them, and counsel say, with due regard to their responsibility to the Government of the United States, that they cannot safely go to trial on March 9, 1925, without said testimony.

UNITED STATES OF AMERICA,
By Atlee Pomerene,

OWEN J. ROBERTS,
Special Counsel,

ALBERT D. WALTON,
United States Attorney for District of Wyoming.

154 United States of America,
State of Ohio,
County of Cuyahoga—ss.

Atlee Pomerene, being first duly sworn according to law, deposes and says that the facts set forth in the foregoing motion are true and correct to the best of his knowledge, information and belief.

ATLEE POMERENE.

Sworn to and subscribed before me, this 20th day of February, 1925.

(Seal) WM. C. HOHN,
Notary Public.

Endorsed: Filed in the District Court on Feb. 23, 1925.

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155 Affidavit in Support of Motion for Continuance

Atlee Pomerene and Owen J. Roberts, having been first duly sworn, according to law, depose and say:

They attach hereto and make a part hereof,

(a) The affidavit filed by them on or about the 20th day of December, 1924, in support of a motion then pending for a continuance of this cause, and ask that it be taken as a part hereof, the same as if herein rewritten, and aver the facts therein set forth to be true;

(b) They also attach hereto a copy of their affidavit made on or about the 24th day of September, A. D. 1924, which was filed by them in the contempt proceedings then pending in the Supreme Court of Ontario, High Court Division. "In the Matter of the evidence Act", being Revised Statutes of Ontario, Chapter 76, Section 59, and "In the matter of the District Court of the United States, for the District of Wyoming", a copy of which said affidavit was attached to the said affidavit filed in the United States District Court of Wyoming, on or about December 20, 1924. Said affidavit is a true copy of the affidavit filed in the said the Superior Court of Ontario, as these affiants believe, except that it does not have attached thereto the Exhibits "A", "B", "C" and "D", therein referred to, and ask that said affidavit
156 be made a part of this affidavit, and aver the facts therein set forth to be true;

(c) The affiants also attach hereto a copy of the judgment delivered by the Honorable Mr. Justice Riddell in the said contempt proceedings delivered by him on December 13, 1924, and make the same a part hereof.

Affiants say that the said witnesses referred to in the Motion for Continuance, filed herein, appealed from the decision rendered against them on December 13, 1924, by the Honorable Mr. Justice Riddell, requiring them to testify, to the Appellate Division of the Superior Court of Ontario; that this was shortly before the holiday recess; that the solicitors rep-

resenting the Special Counsel for the United States and the United States Government sought to have said appeal heard at the earliest practicable moment; that because of the condition of the court's docket, they were not able to get said appeal assigned for hearing until the 9th day of February, A. D. 1925;—that said appeal was argued on February 9th and February 11th; that the court took said case under advisement; that said decision will not be rendered until, as they are advised, on or after February 23, 1925.

Affiants further say that anticipating an early decision, the Commissioners fixed the date for the taking of the depositions, in the event the said decision was favorable to the Government, of witnesses who were then in Toronto on the 20th day of February, 1925; that because said decision was not handed down prior to the date so fixed for the taking of said depositions, February 27th was later fixed by the Commissioners to take said testimony.

These affiants further say that the witnesses, other than H. S. Osler, were directors, or officers, or clerks, of the Continental Trading Company, Limited, or of the said officers or directors; that they have some personal knowledge of
157 the administration of the affairs of the Continental Trading Company, but that these affiants are not informed as to the details of said knowledge and cannot at the present time state of a certainty and with definiteness what information they may be able to secure, for the reason, as it has been claimed by the said H. S. Osler, and as to such witnesses other than H. S. Osler, as mere directors or officers, that they had comparatively little knowledge of the actual administration of the affairs of said company, and as to such witnesses, who acted as clerks, that they had little or no knowledge of the owners of the stock warrants or the amount of their several holdings, or of the dividends which were declared and paid to each of the warrant-holders of said company, nor the amount of profits therein.

These affiants further say that the said H. S. Osler was the duly elected and acting president of the Continental Trading Company, Limited; that through his efforts, a charter was secured under the corporation laws of the Dominion of Canada, at Ottawa; that the application for said charter was made on November 17, 1921; that on the said day, to wit, November 17, 1921, the said H. S. Osler, acting on behalf of the Continental Trading Company, Limited, executed in the name of the said The Continental Trading Company, Lim-

ited, a certain contract, whereby The Continental Trading Company, Limited, purchased from the said Humphrey Texas Company, and the Humphrey Mexia Company, Colonel A. E. Humphreys acting for and on behalf of said Humphrey companies, certain oil, if, as and when produced from certain oil wells in the State of Texas, up to a total of 33,333,333 barrels, at $1.50 per barrel; that said contract was guaranteed in writing on behalf of the Continental Trading Company, Limited, by the Sinclair Crude Oil Purchasing Company, and the Prairie Oil and Gas Company; that on the same day, said The Continental Trading Company, Limited, by the said H. S. Osler, as President, executed a certain other contract, whereby it resold said oil if, as and when pro-
158 duced, to the said companies,—the Sinclair Crude Oil Purchasing Company and the Prairie Oil and Gas Company,—for the amount of $1.75 per barrel, thereby making a profit of at least twenty five cents per barrel thereon.

These affiants further say that from time to time thereafter, The Continental Trading Company, through the said H. S. Osler, as President, authorized and directed the Dominion Bank of Canada, (New York Branch), to buy three and one-half per cent U. S. Liberty Bonds, for its account, and to pay for same out of said profits; that complying with said directions, the said bank bought, prior to May 8, 1922, $300,000 of three and one-half per cent Liberty Bonds, and on said May 8th, delivered said bonds to H. S. Osler, President of The Continental Trading Company, Limited; that thereafter, to wit, May 29, 1922, one M. T. Everhart, a son-in-law and partner of Albert B. Fall, formerly Secretary of the Interior, delivered $90,000 of said bonds to the First National Bank of Pueblo, for said Albert B. Fall, and to be kept safely by said bank for him; that thereafter, to wit, on or about October 23rd, 1922, $20,000 of said bonds were deposited to the credit of the Tres Ritos Land and Cattle Company's account in the said First National Bank of Pueblo, Colorado.

Affiants further say that on the same day, the said $90,000 of bonds were left for safekeeping by the said Everhart with the First National Bank of Pueblo, to wit, on May 29, 1922, he sold $140,500 three and one-half per cent Liberty Bonds to the M. D. Thatcher Estates Company, of Pueblo, for par, plus accrued interest; that with the proceeds derived from the sale of said bonds, the said Everhart paid off notes held by the said M. D. Thatcher Estates Company against the said M. E. Everhart, and other notes against Albert B. Fall, and other notes against the Tres Ritos Land and Cattle Com-

pany, and certain credits were given for the balance of said purchase money.

The capital stock of the Tres Ritos Land and Cattle Company was at said time, and prior thereto, as affiants
159 are informed and believe, owned by the said M. E. Everhart and Albert B. Fall.

Affiants further say that they have the numbers of the said $90,000 of bonds, and likewise the numbers of said $140,500 of bonds, and that the said $90,000 and $106,000 of the said $140,500 of bonds were a part and parcel of the said $300,000 of bonds which were delivered by the Dominion Bank of Canada, New York Branch, to H. S. Osler, on May 8th, 1922.

Affiants further say that for the most part, the information concerning said $140,500 of bonds, and particularly the $106,000 of the same, as hereinbefore referred to, has been obtained by the affiants, as a result of their investigations since the hearing of their motion upon which the last continuance was granted by this Honorable Court.

Affiants further say that the said H. S. Osler not only received said $300,000, but later received other bonds, from time to time, from the said Dominion Bank of Canada, New York Branch, and which were purchased by it for the account of the Continental Trading Company, aggregating more than $2,000,000; that said H. S. Osler distributed, or caused to be distributed, said bonds among said stock warrant-holders; that among the stock warrant-holders were Harry F. Sinclair, James E. O'Neill, Harry M. Blackmer, and H. S. Osler, and perhaps others.

Affiants say that after the said Continental Trading Company, Limited, had received and resold 8,700,000 barrels of said oil on or about May 26, 1923, it, through the said H. S. Osler, sold the said contracts to the said Sinclair Crude Oil Purchasing Company and the said Prairie Oil and Gas Company, for the sum of $400,000, which amount also was deposited in said Dominion Bank of Canada, New York Branch, to the credit of the Continental Trading Company, Limited, and was afterwards invested in bonds which were likewise delivered to and distributed by the said H. S. Osler, among
the stock warrant-holders of said Company, and that
160 shortly thereafter, the directors and officers of said corporation surrendered the charter of the Continental Trading Company, Limited, and destroyed, or claim to have destroyed, all books, papers and records of the said The

Continental Trading Company, Limited, with a few minor exceptions.

These affiants believe, and therefore aver the fact to be, that said books and records, and other papers, were destroyed for the purpose, in part, of concealing the transactions of said The Continental Trading Company, Limited.

Affiants say that shortly before the said contempt proceedings was held before the Honorable Mr. Justice Riddell, the said H. S. Osler, being then under process to appear before the Commissioners, duly appointed by this Honorable Court to take the depositions of said witnesses, left Canada for England, and thence for Africa, on a hunt, and instructed his solicitors, as affiants are informed and believe, to take an appeal; that said appeal was taken to the Appellate Division of the Superior Court of Ontario, and said cause was heard on said appeal on the 9th and 11th of February, 1925; that our Solicitors were not able to have said case assigned for an earlier date.

These affiants are advised, through their solicitors, that the solicitors representing Mr. Osler and the other witnesses have advised them that the said H. S. Osler is on his return trip home, and is now in the hospital at Cairo, Egypt.

Affiants further say that the said H. S. Osler is personally cognizant of all the facts herein set forth relating to the organization of The Continental Trading Company, its activities in the purchase and sale of said oil, the investment of said money in 3-1/2% Liberty Bonds, and their distribution, and that they believe it will be impossible to get this information in full, and in detail, except through the said H. S. Osler.

Affiants further say that in their opinion, the said Osler cannot return to Canada in order to have his deposition taken, in time to have it transcribed and delivered to
161 the Clerk of the United States District Court, in Cheyenne, on or before the 9th day of March, 1925.

Affiants further say that they have used every diligence to get these depositions, and would have had them taken and on file, except for the delays caused by the refusal of said witnesses to testify, and the appeal taken by said witnesses, and especially by reason of the said H. S. Osler's voluntarily absenting himself from Toronto, as indicated by this affida-

vit and by the affidavit of one of the solicitors, E. G. McMillan, of Toronto, which is filed herewith.

These affiants further say that immediately after the said witnesses refused to testify, they instructed their said solicitors to begin contempt proceedings in the proper court against them, as soon as they could be begun, and thereafter in every way to expedite the hearings of said proceedings, and any appeals which might be taken by said witnesses or any of them, and they believe said solicitors have done everything that could be done to expedite the taking of said depositions, and the fact that said depositions have not been taken and are not on file is no fault either of the Special Counsel of the Government or of their solicitors.

Affiants further say that the said testimony of said witnesses is of such importance that they cannot under their responsibility to the Government of the United States, and as officers of this court, safely proceed to trial without said testimony.

ATLEE POMERENE,
OWEN J. ROBERTS.

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162 In the District Court of the United States, for the District of Wyoming.

United States of America, Plaintiff,
No. 1431 vs. In Equity
Mammoth Oil Company, a corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a Corporation of the State of Delaware; and Sinclair Pipe Line Company, a Corporation of the State of Maine, Defendants.

United States of America,
District of Columbia—ss.

Atlee Pomerene and Owen J. Roberts, having been duly sworn according to law, do depose and say:

1. That they are of counsel for plaintiff in the above cause;

2. That during the summer and autumn of 1924, certain information came to them, leading them to the belief that pursuant to the conspiracy alleged in the bill of complaint herein certain United States bonds had been delivered to Albert B. Fall by Harry F. Sinclair or some one acting on his behalf.

3. That said information was not obtainable within the time allowed for taking depositions on behalf of plaintiff, though deponents prosecuted their investigation with all diligence.

4. That upon the application of counsel for plaintiff your honorable Court issued a commission to take the testimony of certain witnesses in Toronto, Canada, which witnesses, or some of them, deponents believe can give relevant evidence connecting said Harry F. Sinclair with the delivery of said bonds to Albert B. Fall.

5. That said witnesses appeared before the Commissioner appointed by your honorable Court but refused to be
163 sworn or testify; whereupon contempt proceedings were brought against them to compel them to testify.

6. That at said time this cause was set for trial October 7, 1924, and because of the necessity to obtain said testimony, as represented to this Court, said cause was continued and fixed for trial January 6, 1925.

7. That said witnesses then for the first time made the contention that the provisions of the Ontario evidence act, under which they had been ordered to appear before the Commissioner and give evidence, were void as being ultra vires the Provincial Legislature,—and this despite the fact that the evidence act of the Dominion of Canada contains similar provisions.

8. That deponents, believing that said contention was made solely for purposes of delay, and being advised that however little merit it might have, appeals from court to court founded upon such contentions might consume months, applied to your honorable Court for a new commission under the laws of Canada, thus obviating and removing said cause of objection.

9. That said new commission was issued, and an order obtained from the Supreme Court of Ontario for the attendance of said witnesses; that pursuant to said order and to notice duly given by the Commissioners said witnesses appeared before the Commissioners in Toronto on November 25, 1924, and were severally sworn, but refused to answer many questions put to them, and which the Commissioners ruled they should answer. (One of said Commissioners is a Toronto barrister of standing and experience).

10. That contempt proceedings were promptly instituted against said witnesses in the Supreme Court of Ontario, and

on December 15, 1924, Mr. Justice Riddell rendered a judgment in said proceedings adjudging that the witnesses must answer all of said questions.

11. That deponents are advised by their solicitors in Toronto that said witnesses propose to appeal from
164 said judgment to the Appellate Division of the Supreme Court of Ontario; and that such appeal cannot be heard at the earliest before the middle of January, 1925, thus requiring the adjournment of the hearings before the Commissioners beyond that time.

12. That in said contempt proceedings deponents filed their affidavit touching certain facts and information obtained by them. Deponents attach hereto a true copy of said affidavit and ask that it be taken as a part of this affidavit; and aver the facts therein set forth to be true.

13. That in September, 1924, deponents learned that one James E. O'Neill and one H. M. Blackmer had information and could give testimony vital to the issues in this cause and having to do particularly with the Continental Trading Company, Ltd., and the possession and delivery of the United States bonds delivered to said Albert B. Fall; that deponents made inquiry as to the whereabouts of said persons, and only about December 1, 1924, located them in France.

14. That deponents at once communicated to them through official channels that the United States desired their presence for the trial of this cause, and that the reply of O'Neill was that his health would not permit of his return to the United States and the reply of Blackmer was that he could not state whether his engagements would permit of his return, but that he would advise later as to this. Deponents have since been informed that Blackmer states his counsel advises him that an application is to be made for postponement of the trial and his final decision with respect to request for his return to America for the purpose of testifying will not be made until the results of the aforesaid motion are known.

15. That it is essential to plaintiff's case that the evidence of these two witnesses, as well as the other evidence above referred to, be obtained and counsel for plaintiff are about to apply to this honorable Court for such orders as
165 may be necessary to procure the same.

16. That as a result of certain facts disclosed to deponents in October, 1924, deponents are making a further

investigation which they believe will disclose facts and documentary proofs which are vital to plaintiff's case; and that such investigation cannot be completed by January 6, 1925.

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Sworn to and subscribed before me this ..... day of December, 1924.

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Notary Public in and for
the District of Columbia.

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166 In the Supreme Court of Ontario, High Court Division

In the Matter of the Evidence Act, being Revised Statutes of Ontario, Chapter 76, Section 50, and in the Matter of an action in the District Court of the United States for the District of Wyoming.

United States of America, Plaintiff,
No. 1431. vs. In Equity.
Mammoth Oil Company, a corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware; and Sinclair Pipe Line Company, a corporation of the State of Maine, Defendants.

We, Atlee Pomerene, of Cleveland, Ohio, and Owen J. Roberts, of Philadelphia, Pennsylvania, United States of America, Counsellors-at-Law, make oath and say—

1. That we are and have been for upwards of twenty years practicing attorneys and counsellors-at-law duly admitted to practice in the Courts of the United States as well as in the State Courts of our respective States.

2. That we are special counsel to the United States in the above captioned case of the United States v. Mammoth Oil Company, et al, by appointment of Calvin Coolidge, President of the United States, made by and with the advice and consent of the Senate of the United States pursuant to a joint resolution authorizing such appointment so to be made, which resolution was adopted by practically a unanimous vote of both Houses of the Congress of the United States and was approved by the President, February 8th, 1924.

167 3. That acting under such appointment and as such special counsel we initiated a proceeding in equity on behalf of the United States against the Mammoth Oil Company, et al, in the District Court of the United States for the District of Wyoming, which is the case mentioned above in the caption hereof; that said case is now pending and has been set for trial October 7th, 1924; that true copies of the bill in equity and the answer of the Mammoth Oil Company thereto are now produced marked Exhibit "A" hereto.

3. That the said District Court of the United States, for the District of Wyoming, is a Court of competent jurisdiction and now rightfully has jurisdiction both of the subject matter of said case and of the parties thereto and all parties therein have appeared by counsel and pleaded to the merits.

4. That as appears by said pleadings the action is to set aside a certain contract of lease for certain public lands of the Government of the United States of the extent of approximately 9380 acres and of great value, on the ground inter alia that such lease contract was entered into and procured as a result of fraudulent practices and a fraudulent conspiracy between one Albert B. Fall, then Secretary of the Interior of the United States, and one H. F. Sinclair, then acting in that behalf for the Mammoth Oil Company, one of the defendants in this cause.

5. That in the course of said proceeding and upon motion of counsel for plaintiff after notice to counsel for defendant and a hearing and on proper cause shown and over the objection of counsel for the defendant, Mammoth Oil Company, said District Court of Wyoming, pursuant to the Statutes of the United States in such case made and provided, granted an order, a duly exemplified copy whereof is now produced, marked Exhibit "B" thereto. Said order was for the taking of the deposition of certain witnesses in the Province of Ontario.

6. That on September 15th, 1924, upon application duly made under Section 50 of the Evidence Act, and after notice to counsel for said witnesses, (except the witness
168 O'Meara), an order was duly made by the Honourable Mr. Justice Wright for the taking of said depositions, and the attendance of the said witnesses before the Commissioner named in the order, and the production of certain papers and documents. We are informed by counsel for plaintiff in Ontario, and believe that counsel for said witnesses (except the witness O'Meara) was present and op-

posed the motion, and that said order as to its terms was settled in conformity with certain requests made by counsel for the said wtinesses. Said order, and the affidavit of Harold Shantz in support thereof, is now produced, marked Exhibit "C" hereto.

7. That said order made by the District Court of the United States, for the District of Wyoming, is unappealed from and in our opinion is not an appealable order; and that no motion has been made to set aside the aforesaid order of the Honorable Mr. Justice Wright, dated the 15th day of September, A. D. 1924.

8. That we are informed and believe that the said order so made by the Honourable Mr. Justice Wright was duly served by registered mail on all the witnesses (except the witness O'Meara) as directed by the said order and on September 23rd, 1924, at ten o'clock A. M., all of the witnesses commanded then to appear did appear before the Honorable Harold Shantz, the Commissioner named in the order except Britton Osler, Esquire, and Harold E. Boston, one of whom was out of the City, and the other of whom was ill and confined to the hospital; and except the witness O'Meara; that said witnesses were also represented by counsel who was the same counsel whom we are informed appeared at the hearing of application for the order; that said witnesses made no objection to the regularity of service; that now produced and shown to us marked "Exhibit D" hereto is the certified copy of the proceedings on the said commission on Tuesday, September 23rd, 1924.

9. That during the course of preparation for the trial of said action in the said District Court of Wyoming we have obtained evidence and proofs which we believe will show:

169 (a). That at about the time of the making of said lease contract set forth in said bill in equity said Albert B. Fall, Secretary of the Interior of the United States, came into possession of certain bonds of the United States known as First 3½% Liberty Loan Bonds.

(b). That said bonds just prior to their possession by the said Fall were purchased and held by the Dominion Bank, New York Agency, said Dominion Bank being a corporation under the laws of the Dominion of Canada.

(c). That said bonds were purchased by the said Bank for the account of a limited company duly authorized and ex-

isting under the laws of the Dominion of Canada known as Continental Trading Company, Limited, and were so purchased at the special instance and request of H. S. Osler, one of the witnesses directed to be examined by the said order of the Honorable Mr. Justice Wright, acting in that behalf as President of the said Continental Trading Company, Limited.

(d). That at the like instance and request of the said H. S. Osler, as such President, said bonds amongst others were delivered to the said H. S. Osler in person on or about May 8th, 1922.

(e). That by the said H. S. Osler or some officer or agent of the said Continental Trading Company, Limited, (which will hereinafter for convenience be described as "Continental") said bonds were distributed to stockholders and holders of stock warrants of said Continental.

(f). That all of the witnesses mentioned in the order of the Honorable Mr. Justice Wright (except the witness O'Meara) were or are directors and or officers of said Continental.

(g) That the said Continental was organized in 1921 and immediately thereafter entered into a certain written
170 contract dated November 17th, 1921, to purchase crude oil from certain corporations, viz., Humphreys Texas Company and Humphreys Mexia Company, which owned certain oil wells in the State of Texas, U. S. A., if, as and when the said crude oil should run from the wells, up to a total of 33,333,333 barrels and to pay for the same One Dollar and fifty cents per barrel.

(h). That performance of said contract by the Continental was in writing guaranteed to the vendors of the said oil by Sinclair Crude Oil Purchasing Company, a corporation, and Prairie Oil and Gas Company, a corporation, (hereinafter for convenience referred to as "Sinclair Crude" and "Prairie", respectively); that on the same day on which said contract was made Continental by a written contract bearing that date resold said 33,333,333 barrels of crude oil to Sinclair Crude and Prairie jointly at an advance, which by the terms of the contract was in no case to be less than 25c per barrel, and by the same contract Sinclair Crude and Prairie agreed and undertook to do and perform all the matters and things in connection with the taking, storing and shipment of the said oil which Continental had undertaken with its ven-

dors, and also to indemnify and save harmless Continental of and from any loss or damage by reason of Continental having entered into the first mentioned contract with its vendors, and the difference between the purchase price and the sale price of said barrels of oil under the terms of the said two contracts was not to be less than $8,333,333.33; that under the terms of the said two contracts Continental had no matter or thing to perform or do (all of its covenants being assumed by its vendees, Sinclair Crude and Prairie), save and except receiving the payments from its vendees and making the payments to its vendors, and taking the profits shown by the difference in price of the two contracts.

(j). That between January 1st, 1922, and May 26th, 1923, in excess of 8,700,000 barrels of crude oil were delivered by the vendors of Continental direct to Sinclair Crude and Prairie its vendees, were paid for by the said vendees
171 to Continental, and were paid for by Continental to its vendors, thus giving a profit to Continental in excess of $2,000,000.00, on the mere technical purchase and resale of the oil, and without any responsibility or obligation on the part of Continental; that the contracts were so arranged that Continental received its payments for the oil on the tenth of each month and paid its vendors on the fifteenth of the same month in which they were respectively received; and that on May 26th, 1923, there remained approximately 25,000,000 barrels of oil to run and deliver under said contracts, which if taken would have shown a profit to Continental of approximately $8,000,000.; that, except as hereinafter in paragraph (n) stated, the only business conducted by Continental during the period mentioned was the receipt of moneys from its vendees and the payment of moneys to its vendors and that the profits shown by these transactions were from time to time invested by the said Dominion Bank by direction of the said H. S. Osler, as President of Continental in First 3½% Liberty Loan Bonds of the United States, which bonds, as above set forth, were then held by the Dominion Bank subject to the order of said H. S. Osler as President, as aforesaid; that said bonds were from time to time delivered to the said H. S. Osler and by him or under his direction distributed to the stockholders of Continental or holders of its stock warrants as dividends.

(k) That 50% of the capital stock of Sinclair Crude is owned by Sinclair Consolidated Oil Corporation, a corporation of which H. F. Sinclair is an officer and stock holder, and the remaining 50% of said stock is owned by the Stand-

ard Oil Company of Indiana. That the former Company is a large stockholder of Mammoth Oil Company, one of the defendants in the said cause, as is also H. F. Sinclair. That about 90% of the stock of Midwest Refining Company, an oil producing corporation; is owned and controlled by the Standard Oil Company of Indiana. That one H. M. Blackmer is President of the said Midwest Refining Com-
172 pany, and that the said H. S. Osler was interested as a stock holder, director or officer in the Midwest Refining Company or said Standard Oil Company of Indiana or both.

(1) That the President of the vendor Companies above mentioned known as Humphreys Texas Company and Humphreys Mexia Company is one A. E. Humphreys, who in the autumn and winter of 1921 was willing and desirous to sell one-half of the crude oil produced by the said two Companies, and to that end the said Humphreys had in the autumn of 1921 negotiations with said Blackmer and with Robert W. Stewart, Chairman of the Board of Directors of Standard Oil Company of Indiana and with the said H. F. Sinclair, which negotiations did not eventuate in a contract; that subsequently in November, 1921, the said Humphreys was requested to meet said Blackmer in New York to discuss such a contract, that said Humphreys and said Blackmer negotiated; that said Humphreys' understanding was that Blackmer was negotiating on behalf of what was termed "Standard Oil Company of Indiana Interests" which included Sinclair Crude; that at said conference in New York with Blackmer said Humphreys agreed to sell one half his production up to 30,000,000 barrels to Blackmer's principals; thereupon Blackmer requested Humphreys to come later to a room in the Vanderbilt Hotel, New York; that Humphreys went to the Vanderbilt Hotel at the time appointed and there found said Blackmer, said H. S. Osler, said Stewart, said Sinclair and James E. O'Neil, President of Prairie; that some one of said persons stated that the proposed sale contract should be made by Humphreys with Continental; that Humphreys had never heard of Continental and stated he would make the contract with it only if he received some guarantee of performance thereof by Continental; that said Sinclair and said O'Neil stated that Sinclair Crude and Prairie would in writing guarantee such performance; and that Humphreys then agreed to make the contract with Continental.

(m) That at the said conference the only person present who purported to represent and act for Continental
173 was said H. S. Osler, who purported then and there to act as its President and to speak for it; the only persons present purporting to represent and act on behalf of Sinclair Crude were said Sinclair and said Stewart; the only person who purported to represent and act for Prairie was said O'Neil. The only other person present not representing or interested with Humphreys as vendor was said Blackmer; at said conference it was agreed that the amount of oil to be sold to Continental should be 33,333,333 barrels instead of 30,000,000 barrels. At said conference said Humphreys was asked whether he would execute an additional contract whereby he would sell one-half of the production of the Humphreys Companies to Sinclair Crude and Prairie jointly so long as oil should run at the posted filed price, said contract to come into effect and be operative after the delivery of the full 33,333,333 barrels covered by said first contract. Humphreys so agreed and thereupon the said two contracts were drawn up and were then or subsequently executed, both under date of November 17th, 1921, by the respective officers of the respective corporations. Said Humphreys had no further or other interest in the matter except the sale of his oil at a price which he deemed proper and adequate, had no connection with Continental and has had none at any time; the same is true of the Companies which he represented at said conference. That immediately the contract had been closed, guaranteed in writing by Sinclair Crude and Prairie, and the additional contract for Humphreys additional production had been made with Sinclair Crude and Prairie, Humphreys left the conference; and immediately thereafter Continental entered into a written contract of the same date with Sinclair Crude and Prairie turning over the oil just bought from Humphreys' Companies at the profit above stated and under the terms and conditions above set out.

(n) That about December 28th, 1921, Continental acting through said Osler purchased and took an assignment of a contract made by Western Oil Fields Corporation whereby
Continental became entitled to delivery of 3,000,000
174 barrels of crude oil to be produced by Western Oil Fields Corporation at a price of $1.20 per barrel; that on the same day Continental resold said oil to Sinclair Crude and Prairie at a price of $1.45 per barrel, that we do not know the exact amount of oil delivered under this contract but all of it was taken direct from the producer Western Oil Fields Corporation by Sinclair Crude and Prairie

and paid for at said advanced price of $1.45 to Continental, Continental in turn paying for it to its vendor at the rate of $1.20 per barrel; that the profit so accruing was invested in United States Liberty Bonds of the same kind as above mentioned which bonds were distributed as dividends by the officers of Continental.

(o) That on May 26th, 1923, Continental assigned its said two contracts, one with the Humphreys Companies and the other with the Western Oil Fields Corporation, to Sinclair Crude and Prairie jointly for a price of $400,000, one-half of which was paid by Sinclair Crude and the other half by Prairie. The said $400,000 was likewise invested in similar Liberty Bonds and said bonds were distributed as dividends by Continental or its officers. Since that date over 8,000,000 barrels of Crude Oil have run and been delivered under the Humphreys contract to Sinclair Crude and Prairie as assignees of said contract but at the original price named in the Humphreys contract of $1.50 per barrel, and not at the Continental price of $1.75.

(p) That after said assignment Continental went out of business and that in January or February 1924, all of its records, books or papers were destroyed. The said Osler not only was a stock holder or stock warrant holder in said Continental but was President and [cheif] executive officer of Continental; that all of the acts which he did, as above set forth, or ordered to be done, were done by him as such President of the said Company. The facts within the knowledge of the witness Suneva M. Fordyce and the other witnesses mentioned in said order (except the witness O'Meara) are within their knowledge as officers and or directors of Continental. The correspondence of Continental was largely conducted by the witness Fordyce and the records kept
175 largely by her under the direction of said H. S. Osler as President.

(q) That on April 13th, 1922, three brokerage firms in New York sold and delivered to the Dominion Bank $250,000 par value of said bonds; that on April 17th one of said firms sold and delivered to said bank $50,000 par value of said bonds. We have ascertained the serial numbers of all of said bonds. Said Bank while showing said transactions on its books, has no record of said numbers. Said Bank, however, has records showing the delivery to it of said same $300,000, of bonds on May 8th, 1922, to said H. S. Osler as President of Continental; that said bonds so delivered were

taken by said H. S. Osler in order to divide amongst the stockholders of Continental as dividends; that he did so divide them, and that they were delivered against stock warrant coupons; that this was done after May 8th, 1922; that on or about June 15th, 1922, $90,000. of said $300,000. bonds, identified by their numbers, were in the possession of the said Albert B. Fall, the person who it is alleged in this case conspired with said Sinclair to defraud the United States in the matter of said lease, which said lease was executed in the month of April, 1922. That now produced and shown to us marked Exhibit "E" to this affidavit is a photostatic copy of the ledger account of said Continental with said Dominion Bank, New York Agency, a like copy of the bond account of Continental with the same agency, a like copy of the personal bond account of said H. S. Osler with said Agency, and a like copy of a letter of said H. S. Osler to said Agency ordering the purchase of said $300,000. of bonds.

10. We are advised and verily believe that the statements contained in the several clauses of paragraph nine hereof are true. The information contained in the said clauses was obtained by us from the following sources: Clause (a) From Thomas B. Foster, of San Francisco, California, an investigator employed by us to investigate the matters covered by the said clauses. Clauses (b, c, d & q.) From M. P. Bolan of New York, an investigator employed by us to investigate the matters referred to in the said clauses and from a
176 personal inspection by us of the books and records of the Dominion Bank, New York Agency, in the City of New York.

Clause (e) From statements made to us by Mr. H. S. Osler.

Clause (f) From the record of the corporation of the said Company in the Department of the Secretary of State at Ottawa.

Clause (g & h). From a perusal of the original contracts referred to in the said clauses, which were produced for our inspection by the parties in whose custody they now are, to wit: Henry L. Phillipps, Sinclair Crude Oil Purchasing Company, Samuel Fitzpatrick Chairman of Board Prairie Oil & Gas Company.

Clause (j) By the inspection of the contracts referred to in clauses (g) and (h), and an inspection of the records of the said companies and of the Dominion Bank, New York

Agency, in the City of New York, and as to the business of the said Continental Company and the delivery of the bonds by it to the stockholders of the Continental Company or the holders of its stock warrants from Mr. H. S. Osler.

Clause (k) From governmental reports as well as from statements of officers and officials of the said Companies, including Mr. H. S. Osler, the President of the Continental Company.

Clause (l) From statements made to us by A. E. Humphreys of Denver, Colorado, and from an inspection of the contracts referred to, which were produced for our inspetcion by the persons now having them in custody.

Clause (m) From statements made to us by A. E. Humphreys and also from an inspection of the original contracts produced to us by the parties having custody of the same.

Clause (n) From statements made to us by Henry L. Phillipps, President of Sinclair Crude Oil Purchasing Company, and by an inspection of the contracts and corporate records of the Companies concerned which were produced to us by the officers having custody of them

177 Clause (o). By an inspection of the written assignments and the records of the companies concerned which were produced to us by their respective officers.

Clause (p). From statements made to us by Mr. H. S. Osler.

11. That it is relevant and important to the plaintiff to show in said proceeedings in the District Court of Wyoming who were the stockholders or holders of stock warrants in said Continental; to whom said bonds were delivered as dividends or delivered upon the order of the parties entitled to said bonds as said dividends; that H. S. Osler and said Suneva M. Fordyce and perhaps others of said witnesses have knowledge and means of knowledge which will disclose the persons to whom the said bonds were given; that the proof of delivery of said bonds and the persons to whom they were given is an important portion of the plaintiff's proofs in said action in order to show the devolution of said bonds to said Albert B. Fall in whose possession they were within a very brief period after they came into the possession of the said H. S. Osler and were by him delivered out.

(Sgd.) ATLEE POMERENE,
(Sgd.) OWEN J. ROBERTS.

Sworn before me by both the said deponents at the City of Toronto in the County of York this 24th day of September, A. D. 1924.

(Sgd.) R. G. MEECH,
A Commissioner, etc.

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178 S. C. O.

United States of America,
vs.
Mammoth Oil Co.

Copy of Judgment of Riddell, J., delivered 13th December, 1924.

N. W. Rowell, K. C., and E. G. McMillan, for the plaintiffs, for the motion.

Nesbitt, K. C., for the respondents.

This motion arises out of the notorious Tea Pot Dome transaction which has agitated the United States for some time.

The United States of America filed a bill in the District Court of the United States for the District of Wyoming against the Mammoth Oil Company, the Sinclair Crude Oil Company and the Sinclair Pipe Line Company, the bill of complaint setting out after the manner of our Statement of Claim the facts alleged by the plaintiff and the relief sought.

The facts as alleged may be summed up as follows:

The late Albert B. Fall, who was Secretary of the Interior at Washington, being desirous of obtaining the power of granting to certain persons a lease of very valuable oil lands, the property of the United States, persuaded the President, Mr. Harding, through false representations, to make an executive order removing these oil lands from the Secretary of the Navy and placing their disposal in the hands of Fall.

This being done, Fall, acting as Secretary of the Interior, along with another Cabinet Officer, executed a lease to the Mammoth Oil Company. The Mammoth Oil Company took possession of the property and have been working it.

The charge is that Fall and Sinclair, the latter acting on behalf of the Mammoth Oil Company, entered into a con-

spiracy to defraud the United States by bringing about the lease already mentioned.

The other defendants are rather incidentally concerned so far at least as the present motion is concerned. The relief is substantially to have the lease set aside and for incidental and consequent relief.

179 An affidavit then is filed by the Attorneys for the United States in which they set out what they believe to be facts, as they have obtained evidence and particulars thereof, which may be summarized as follows: About the time of the making of the lease Fall came into possession of certain bonds known as First 3½ per cent. Liberty Loan Bonds of the United States; that these bonds just prior to their possession by Fall were purchased by the Dominion Bank, New York Agency, at the special instance and request of H. S. Osler, President of the Continental Trading Company, Limited; that these bonds were delivered to Mr. Osler and by him distributed amongst the stockholders and holders of the share warrants in the Continental Company.

They further say that one Humphreys, the President of the Humphreys Texas Company and Humphreys Mexia Company, having a large quantity of crude oil on hand, met certain parties in New York, amongst them one Blackmer, and agreed to sell to Blackmer's principals one-half of his production up to 30,000,000 barrels; that it was arranged at a meeting at which Blackmer, Osler and others were present that instead of the sale being made direct to Blackmer's principals it should be made to the Continental who with Blackmer's principals should guarantee the performance of the contract by the Continental; that Osler was the president and acted throughout for the Continental and that the Continental subsequently became entitled to the delivery of a large quantity of oil and finally assigned its contracts to one of the defendants and went out of business.

Of course it would be a matter of importance to prove that the Continental Company directly or indirectly caused to be delivered to Fall the bonds which have already been mentioned as being in his possession.

On application made to the United States District Court the Plaintiffs were authorized to examine Mr. Osler and certain members or employees of his firm, and on September 15, 1924, my brother Wright ordered the witnesses to attend for examination. This order was not appealed against but the

witnesses appearing before the Commissioner refused to be sworn. A motion then being made, my brother Middleton directed the attendance and examination of the said
180 witnesses before Mr. Shantz who had been named as the sole commissioner in the previous order, and Mr. G. W. Mason, K. C., a member of our Bar, it being stipulated that the rulings as to law by Mr. Mason were to be accepted by his brother commissioner.

The witnesses named appeared before the Commissioners and refused to answer certain questions that were put to them, whereupon this motion is made to commit the witnesses for contempt of Court or for such further or other order as the Court may deem proper.

Upon the opening of the matter I inquired whether the purpose actually was to commit, but was informed that that was not the purpose. What was desired was an opinion of the Court as to the [propriety] of the refusal on the part of the witnesses to answer the questions specified.

An affidavit was tendered which had been made by one of the counsel for the plaintiffs after the service of the notice of motion. I refused to admit it so far as it was to be used upon a motion actually to commit, holding that such a motion was strictissimi juris; and, following my own decision in *Re Greenwood* (1908) 11 O. W. R. 182, approved in *Smith* vs. *Steen* (1908) 11 O. W. R. 762, I offered to accept it so far as it would bear upon a motion simply to obtain the opinion of the Court, but only subject to the right of defendants to cross-examine if so advised, in which case an [adjournment] would be granted.

Counsel for the plaintiff submitted to my ruling and proceeded with the motion.

It is quite plain that the sole object of this motion is to obtain the name of the person for whom the Continental Company was acting and the nature of the persons to whom the very substantial sums which accrued to the Continental Company were paid. This for the very obvious purpose of connecting such principal and such payees with the actions of fraud alleged.

The privilege which is set up by the witnesses derives from the facts thus set out by Mr. Osler, who is a barrister and solicitor in active practice in the City of Toronto:

181 "About the middle of November, 1921, I met a gentleman in New York in connection with this matter. Prior to meeting him I had no information of the nature of the business which he subsequently discussed with me and which, as will appear from this statement, was legal professional business and had to do with the purchase and sale of a very large quantity of crude oil. This being an extremely speculative commodity, and the oil business being operated under most competitive conditions, the necessity for confidence in connection with the matter was apparent, and in fact my said client informed me at the outset that he wished it understood as the basis of his consultations with me on the subject that the business was of a confidential nature and that he did not wish his name disclosed under any circumstances. He also told me later that he had associates who were interested with him in the matter and whose names he desired me not to disclose. They then according to my understanding became my clients.

"Since the present inquiries were commenced, I have communicated with this client and have received his instructions that his confidence should be in every way respected, including his original instructions as to the non-disclosure of his name and the names of his said associates. In view of this, I am bound to refuse to give evidence of facts of which I obtained knowledge solely from statements made to me by my clients or by carrying out my confidential instructions, except in so far as may be necessary to state facts upon which such claim of privilege rests.

"In the course of the conference above referred to, my client informed me that a Colonel Humphreys was the owner of a property in Mexia, Texas, which numerous interests had desired to purchase and that all previous negotiations to that end had failed, but that arrangements had now been made for the purchase of a large quantity of crude oil, the amount mentioned being 30 million or 33 million barrels, to be delivered as produced on the said properties in Mexia or any other properties that the Humphreys interests owned.

182 "My said client further stated that arrangements had also been made for a resale of the said oil at an advance of 25 cents per barrel to the Prairie Oil and Gas Company and the Sinclair Crude Oil Purchasing Company and that it was desired that I should act as counsel in preparing and settling the said contracts. He further stated that Humphreys had imposed very onerous conditions as to de-

livery, storage and transportation of the said oil, and that as litigation with him was obviously possible, it was also desired that I should take charge of the receipt and payment of all moneys as legal business so that I might be on the alert to avoid litigation.

"In the course of the discussion with my client on the subject of the receipt and payment of moneys, I reached the conclusion that if litigation should take place as apprehended, or even if it should be seriously threatened, my position would be difficult and embarrassing unless the business were incorporated, and I so advised him, advising him at the same time that the incorporation of the company would not prevent me from carrying out my instructions and conducting the business as confidential legal business. The incorporation of the company having been agreed to by the Humphreys interest, the Continental Trading Company, Limited, was incorporated on application made through my office, the officials being all members or employees of my firm and the company being in effect merely a corporate clerk in my office.

"The business of the company was conducted consistently with this position. No director, clerk, official or officer of the company outside my office was ever appointed, and I remained in entire charge of the matter as effectively as if no company had ever been formed.

"No meeting of the shareholders of the company was ever held for business purposes, the only meetings held being formal meetings of registered shareholders required by law to be held in connection with the organization and winding up of the company.

"No notice or advertisement directed to shareholders was ever issued or published and no distribution of any
183 cash or assets of the company to the shareholders thereof ever took place except in accordance with my said instructions.

"The incorporation of the Company did not in any way alter the nature or effect of the said business or the way in which it was carried on, and I am advised and believe that the position in respect of the confidential nature of the said business was not thereby altered and that I am bound to refuse to give evidence with regard to the affairs of the Continental Trading Company exactly in the same way and to the same extent as I would be bound to refuse to give evidence regarding the same confidential business, if such Company had not been incorporated.

"For the same reason, I would be bound to refuse to produce the books and papers of the said company. The fact, however, is that, except as below stated, I have no books or papers relating to said Company or to said business, the same having been destroyed with other "dead" files in the ordinary course of business, such destruction having taken place in my absence.

"By way of explanation, I would add that my firm's office lease having been about to expire in this present year 1924 and storage accommodation in my firm's office for old papers having long been overfilled, those in charge of the office took up, soon after the first of this year, the question of getting rid of all useless and dead material encumbering files. As to the records of the Continental Trading Company it appeared that in the early part of 1923 the whole business of the Company had come to an end, and that all proceedings had been taken to bring about as far as legally could be done, the dissolution of the corporation, and that the Charter of the Company had been returned to the State Department at Ottawa with the request that it might be cancelled if and when this could legally be accomplished. Thereupon, and for no other reasons, these papers were destroyed together with large quantities of other papers being the files in at least 97 other matters which for one reason or another appeared to be no longer useful. I was not in the country at the time, or for several months thereafter,
and I had no part in the matter of the destruction of
184 these papers, but if I had been present I should not have been able to suggest any reason for keeping them or any possiblity that they would ever be called for. I returned to this country at the end of May or the beginning of June 1924, and soon thereafter inquiry was made for me by persons purporting to act for the United States of America and I immediately sent for the files of Continental Trading Company, when I was for the first time informed that the destruction of the said records had taken place.

"The exception above indicated arises in this way. After a careful search for the purpose of ascertaining whether any books or papers relating to this matter escaped destruction, I have found that there is in the office the ordinary record of work done and disbursements made in the matter and also several stenographers' note-books."

"I would like to put in there what I see should have been put in, that the earliest date of any such stenographers' note-

book is June, 1923. I mention that merely by way of completion. It is of no importance otherwise.

"I have carefully considered all entries in the above and find such entries either refer to private matters on which the firm alone is interested or to matters obviously irrelevant to the issues herein, or to matters of confidence covered by the claim of privilege above indicated, and for the same reasons I must therefore refuse production thereof.

"I am now informed that the matter in respect of which this Commission has been issued, is the disposition made of certain United States Bonds amounting to $90,000 which are said to form part of bonds delivered to the said Company and receipted for by the Company by my signature in April or May 1922, amounting altogether to $700,000, and that what is desired is evidence as to the person or persons who received the said $90,000 of bonds from the Company.

185 "It is suggested by Counsel for the plaintiffs in affidavits filed in the matter of this Commission, that the whole of the said bonds amounting to $700,000 and including the said $90,000 of bonds were delivered to shareholders of the said Company. This necessarily involves an inquiry into the ownership of shares of the said Company. These shares were represented throughout the operations of the Company by coupon share warrants transferable by delivery to bearer and entitling bearers thereof to receive any distribution of cash or securities in exchange for the appropriate coupon or for the warrant in the case of winding up and final distribution.

"I have no knowledge except as above stated as to the original owners of the said share warrants, and so fas as I know, no list of the persons entitled to the shares was ever made.

"I have never at any time had any dealings in this matter with the persons named by my said client as aforesaid, or any of them, except in the course of carrying out my instructions and on the basis of confidence both as to any business transacted and the use of their names in connection therewith.

"I have not now and never had any knowledge of information as to the ownership of shares of the said Company at any time or as to the receipt by any such owners of any assets of the Company except that obtained by confidential statements made to me by my said client or by carrying out

his confidential instructions and exclusively by reason of such instructions. I am therefore advised that I am not at liberty to give evidence with regard to any such matter.

"With regard to the other witnesses named in the Order of the Hon. Mr. Justice Middleton of 30th October 1924, and the Appointment of the said Commissioner therein dated 14th November 1924, I say as follows:

"The said witnesses are all members or employees of my firm as follows: Britton Osler, King's Counsel, member of the firm, N. E. Strickland, Barrister, member of the firm,
186 Morley H. Breuls, Law Student, employee of the firm, Harold E. Boston, Law Student, employee of the firm, and Louis Samuel, Law Student, employee of the firm.

"The above named witnesses have severally and from time to time but not continuously occupied the position of director of the Continental Trading Company but did so entirely in the capacity of their said relationship to my said firm and for the purpose of carrying out instructions given by me in the conduct of the matters above referred to, which matters, as above stated, always remained in my sole charge.

"The witnesses named in the said Order and Appointment, Suneva Margaret Fordyce, is my confidential secretary, and in that capacity only and not otherwise acted as secretary of the said Continental Trading Company for the purpose of carrying out my instructions in the matter.

"None of the witnesses above named had or could have any knowledge of the matters in question except that which they obtained in the purpose of carrying out instructions given by me for the purpose of carrying out my confidential instructions in the matter, and I am advised and believe that they are therefore bound to refuse to give evidence touching the said matter in the same way and to the same extent as I am bound to refuse to give evidence with regard to the same confidential business.

"The said witnesses have not, nor has any of them in their custody or possession, any books or papers, the statement above made by my self covering all books, papers or documents which any of the said witnesses ever could have had in their custody or possession.

This being boiled down reduces to about the following:

1. Mr. Osler met a gentleman in New York whom for convenience I shall call Mr. X—how, it does not appear, but the meeting could scarcely have been casual.

2. He seems to have known Mr. X before [illegible] he does not say or suggest that he met [illegible] first
187 time and did not know his name upon that occasion.

3. Mr. X. told Mr. Osler that he had a scheme requiring secrecy and the stipulated that his name was not to be disclosed.

4. There was an implied promise on the part of Mr. Osler not to disclose the name—this, however, was necessarily subject to the implied exception that if the law called upon him to disclose the name it would be done.

5. The scheme was in some way and by some persons formulated.

6. Mr. Osler, in order to carry out the scheme, formed a company which would in the parlance of the street be called a "Fake" company ostensibly to carry on business as a company, but in reality to do what Mr. Osler himself would have done, to carry out the scheme. Of course the company was formed simply for the greater secrecy.

7. The profits which the company was in form to make were the profits of X. and his nominees, Mr. Osler himself to have a percentage.

8. Mr. Osler, those in his office associated in the scheme and the Company were mere instruments in the hands of X to accomplish his scheme surrounded by apparent safeguards to avoid his identity being known.

On these facts and the other facts of the case it is now to be considered what right, if any, the plaintiffs in this case have to disclosure on the part of Mr. Osler.

8. 2

We may leave to one side the old theories of "the privilege of the solicitor" as it is commonly called. Originally it seems to have been based upon the honor of the solicitor and a consideration for his oath, but that theory has gone by the board for a century and a half, and now there can be no question that the privilege is not the privilege of a solicitor at all, it is the privilege of the client and the public: Wright vs. Mayer (1801), 6 Ves. Jr. 281. And the basis for such privilege is the benefit of the public, in that it is well known that the confidence reposed by the client in his solicitor should not be weakened because the injury which would result to
188 the public from such a rule would be greater than the benefit derived for the correct disposal or litigation;

Wigmore on Evidence, 2nd ed. (1923), Vol. 5, paragraph 2285.

The first point to be considered is whether the solicitor can be compelled to disclose the name of his client. In this matter there can be no question as to the ordinary rule in litigation. Each litigant is entitled to know against whom he is fighting, and it has never been considered that the name of the client in litigation can be concealed. That is not disputed. But in this case it is said that the client is not litigating. He is not concerned in the litigation. The United States has no claim against him and he is making no claim against the United States; consequently the United States is not entitled to have his solicitor [desclose] his name.

According to the rule as laid down in the Duchess of Kingston's case (1776), 20 How. St. Tr. at page 614, by Lord Mansfield, the privilege is limited to "what is revealed to them by their client in order to take their advice or instruction with regard to their defense." The last three words of course are not applicable in the present case, but the rule is fairly well established that it is only what is revealed to the solicitor by his client that the solicitor is not to disclose.

In the present case (is) does not appear that Mr. Osler was given his name for the first time by his client, but the name of the client was "A fact in his own knowledge and not a matter of secrecy committed to him by his client": "Reporter's note in R. vs. Watkinson (1740), 2 Strange 1122. I think that the decision in that case would not now be followed, but that the Reporter's query properly indicates what the law is. See Doe vs. Andrews, Cowper 846; Lord Say & Seale's Case, Buller's L. N. P. 287; Cobden vs. Fenwick, 4 T. R. 432.

Even if I could find the fact to be that Mr. Osler was given the name of his client by himself, and that he did not know his name except from such information, the cases seem strong enough that the name should be disclosed. I
189 do not propose to deal with cases in which the client is a litigant, but only cases in which he is a witness. Lord Eldon in the case of Parkhurst vs. Lowten, in Swanst 194, says: "The witness demurring on the ground that his answer would violate the confidence reposed in him as attorney must name the party to whom he was attorney." This was approved in the well-known case Bursill vs. Tanner (1885), 16 Q. B. D. 1. There judgment had been signed against a married woman in an action. An inquiry was di-

rected concerning her separate estate. The solicitor to the trustees of her marriage settlement on being examined stated that the deed of settlement was in his possession as solicitor to the trustees. He refused to state the name of the trustee. In his judgment Lord Esher says at page 4:

"With regard to the question whether the solicitor could refused to disclose the names of the trustees on the ground that they were communicated to him in confidence, the matter stands thus: "He is in this predicament. He must allege that the communication was privileged because the trustees, his clients, made it to him in confidence, and then he cannot refuse to say who these clients are. I agree with the opinion expressed by James, L. J., in Ex parte Campbell, In re Cathcart that the fact who the clients were was not the subject of a professional confidence. The client does not consult the solicitor with a view to obtaining his professional advice as to whether he shall be his solicitor or not."

Cotten, L. J., at p. 5 says:

"The mere fact who are the trustees cannot be said to be a matter communicated to the solicitor confidentially for the purpose of obtaining his professional advice, or at any rate it is highly improbable that it should be so. There is also another ground for compelling the disclosure of their names. The solicitor claims this privilege as that of his clients. He must then state the names of the persons for whom he claims the privilege. On both these grounds I think he was bound to answer the question and to give the names and addresses;" while Lindley L. J., quotes very briefly the words of Lord Eldon already mentioned. It is just possible that this 180 rule would not be held to extend to cases in which the name was communicated confidentially for the purpose of being advised by the solicitor. At all events that seems to be the rule when the residence of the client is asked for: Re Arnott (1889) 60 L. T. R. 109, at p. 110, per Cave, J.

Here, however, there is no contention that the name was communicated to the solicitor for the purpose of being advised by the solicitor.

I am not prepared to say that if a case were to occur in which a person, wholly unknown to a solicitor, were to come to him and say, "I require your advice, and to obtain that advice I must give you my name; it is necessary that you should know my name in order to give the advice, and I consequently give it to you in strict confidence not to be disclosed to the rest of the world", in such case I say I am not prepared

to decide that the confidence must not be respected. But that is not this case.

The authorities seem to be uniform that it is only facts which come to the knowledge of a solicitor from his client, and not facts obtained on information [aliunde], that are excluded from disclosure.

This rule applies also to the acts of the solicitor. The acts of the solicitor are facts which indeed may proceed from the instructions of the client, but are in no wise confidential communications by the client to the solicitor. I have no doubt whatever that what was done by Mr. Osler, his associates in his office and by the Company in the way of obtaining money, disbursing it, the persons to whom it was paid, and all the particulars about such transactions, must be disclosed and are not covered by the privilege.

I do not think it necessary to cite the cases in support of this conclusion, but I may say that on the whole case, upon this point, as well as other, I have read and considered all the cases mentioned in Wigmore on Evidence, In Poley and Cordery on Solicitors, and in Halsbury. I have
191 also seen a few others. The result of my investigation is as already stated.

The result is that I think the questions which have been objected to must be answered, and the plaintiff will have costs.

192 State of Ohio,
County of Cuyahoga—ss.

ATLEE POMERENE, being first duly sworn, deposes and says that he is one of the Special Counsel of the Government in the above entitled cause of action, and that the facts and allegations contained in the foregoing affidavits are true, to the best of his knowledge and belief.

ATLEE POMERENE.

Sworn To and subscribed in my presence, this 23rd day of February, 1925.

(Seal) DONALD M. MARSHMAN,
Notary Public in and for Cuyahoga County, Ohio.

State of Pennsylvania,
County of Philadelphia—ss.

OWEN J. ROBERTS, being first duly sworn, deposes and says that he is one of the Special Counsel of the Government in

the above entitled cause of action, and that the facts and allegations contained in the foregoing affidavit are true, to the best of his knowledge and belief.

OWEN J. ROBERTS.

Sworn To and subscribed in my presence, this 25th day of February, 1925.

(Seal) GEORGE A. MAENE,
Notary Public in and for Philadelphia County, Pennsylvania.

Notary Public. My Commission expires March 25th, 1925.

Endorsements: No. 1431 Civil. In the U. S. District Court, District of Wyoming. In Equity—No. 1431, United States of America, Plaintiff, vs. The Mammoth Oil Company, et al, Defendant. Affidavit in Support of Motion for Continuance. Filed Feby. 26, 1925, Charles J. Ohnhaus, Clerk. Squire, Sanders & Dempsey, Cleveland.

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193 (Affidavit of Owen J. Roberts.)

United States of America,
Eastern District of Pennsylvania—ss.

Owen J. Roberts, being duly sworn according to law, upon his oath deposes and says that he is one of Special Counsel for plaintiff in the above entitled cause, and that Atlee Pomerene is also such Special Counsel; that both of said persons were appointed by the President under a Joint Resolution of Congress, for the purpose of preparing and conducting, inter alia, the above captioned cause; that continuously since their appointment on, to wit, February 18, 1924, said counsel have been continuously engaged in preparation of and conduct of litigation pursuant to their appointment; that they have employed as assistants a number of lawyers and also a corps of investigators, and have from time to time
194 called upon other Government officials for assistance; that the investigations made by them have carried them and their assistants to various points in the United States and outside of the United States into Canada; that in the course of said investigation, many weeks after the filing of the bill in this case, they discovered that Albert B. Fall, many months after the making of the lease complained of in the bill in this cause, deposited in various banks certain United States Liberty Bonds. Plaintiff's counsel had no other fact upon which to work in this connection except the fact just

stated. During all of the summer of 1924 counsel and their assistants were making an investigation in order to ascertain the source of the acquirement of said bonds by said Fall. During said summer counsel discovered that some or all of said bonds had been in the possession of Continental Trading Company, of which H. S. Osler, of Toronto, Canada, was president, and interviewed the said Osler at Toronto, thus obtaining from him certain facts, but further ascertaining from him that he was not at liberty to give further facts which it was essential counsel should know and which would have disclosed, as counsel believed, that Harry F. Sinclair, mentioned in the bill of complaint, either directly or indirectly received said bonds and passed the same in the month of May, 1922, to Albert B. Fall pursuant to a scheme and arrangement between said Fall and said Sinclair, and pursuant to the conspiracy alleged in the bill of complaint. Counsel therefore petitioned for a commission to take the testimony of said Osler, which was granted. In an affidavit by Atlee Pomerene filed herewith the facts are set forth in full concerning the proceedings under that and an additional commission to take
195 the testimony of Osler and other witnesses connected with Continental Trading Company, in Toronto.

Understanding that it was their duty to press the matter with all speed, counsel, although compelled to go with their associates and assistants to Los Angeles in the month of October, 1924, to try an equity case there entitled United States vs. Pan American Petroleum & Transport Company, et al., arranged that work should be continued by the investigators working under them and that the effort to obtain testimony under the commission issued to Ontario should be pressed forward with all vigor. Counsel were actually engaged in the trial of the above mentioned Pan American case until about the middle of November and did not arrive at their office in Washington until about the 20th of that month.

By the time counsel had gotten back to Washington from the trial of said Pan American case it had developed that the said Osler and other witnesses in Toronto who as counsel verily believe have first hand and complete knowledge of the matters relevant and necessary to be proved in this cause, would use every effort to resist giving testimony.

Late in September, 1924, counsel for the first time learned of the connection of James E. O'Neil and H. M. Blackmer with Continental Trading Company. Being assured that said Osler and the other witnesses in Toronto would give the

needed information, and having authority of the Court to take their testimony, it was not deemed necessary to do more than ascertain the whereabouts of said O'Neil and said Blackmer. Investigations were made as to the whereabouts of said witnesses and upon the return of counsel from the trial of the Pan American case above mentioned counsel received reports that said O'Neil and said Blackmer were in
196 France or Great Britain, they having been in one or the other of these countries, or in some other foreign country, practically continuously since January or February, 1924. Thereupon counsel for plaintiff immediately communicated with said O'Neil and said Blackmer through the Department of State of the United States of America, requesting that they and each of them return to the United States so as to testify at the trial of this cause, which was then fixed for January 6, 1925. Communication was had with said witnesses through the American ambassador at Paris and in due course a reply was received by counsel through the State Department to the effect that the said O'Neil could not return on account of the state of his health, and that the said Blackmer understood from his counsel that this cause might not be tried on January 6th on account of the possibility that the Canadian witnesses would not by that time have testified, and that when said Blackmer learned definitely whether the said case would be tried on January 6 he would advise counsel for plaintiff whether he would return to the United States.

Counsel for plaintiff then immediately determined to issue letters rogatory, if that were possible, to take the testimony of said witnesses. Some time was necessarily consumed in studying the authorities as to whether your honorable Court would and could issue letters rogatory for an open commission for testimony in a foreign country, and while the necessary papers were being prepared to that end Owen J. Roberts, of counsel for plaintiff, was waited upon, on or about December 17, 1924, by George Gordon Battle, who stated that he represented H. M. Blackmer and desired to know along what lines counsel desired the testimony of said Blackmer. Mr. Battle was told what testimony counsel desired
197 from Mr. Blackmer, and Mr. Battle then stated to Mr. Roberts that it would be very difficult to lay the matter before Mr. Blackmer and ascertain whether Mr. Blackmer would come home to give such testimony or would voluntarily give such testimony upon an ordinary open commission as distinguished from letters rogatory, and that the only way Mr. Battle knew of getting a satisfactory answer was to go

to France and interview Mr. Blackmer. Mr. Battle stated that while he did not represent Mr. O'Neil he would no doubt see Mr. O'Neil upon the same trip and could in all likelihood bring to counsel for plaintiff a statement of Mr. O'Neil's position in the matter. It was then agreed between Mr. Battle and Mr. Roberts that Mr. Battle should go abroad immediately and interview his client, and if possible Mr. O'Neil, and should at once advise counsel for plaintiff whether they or either of them would return to give testimony at the trial or would voluntarily appear before a commissioner to be appointed under a rule for a commission if the same should be issued by this honorable Court. Mr. Battle did promptly go abroad as he undertook to do and cabled counsel from France that he had seen the persons in question and was immediately returning. On or about January 15 Mr. Battle arrived back in the United States and within the next day or so had a personal interview with Mr. Roberts. He then stated that both Mr. Blackmer and Mr. O'Neil would resist giving any testimony in this cause. When this information was received both of counsel for plaintiff were actually engaged in certain proceedings in the District of Columbia in certain criminal cases in which they represent the Government and in which important and large briefs were being prepared, and in which several days were actually consumed in argu-
198 ment before the court. Concurrently with this work, and as soon as could be done in view of counsel's engagement, the papers were put in final shape for the application to this honorable Court for letters rogatory, notice given of the application, and the letters rogatory issued.

From the summer of 1924 down to and including the present time counsel for plaintiff have made every reasonable effort to make available the testimony which they believe to be vital and essential for the proper presentation of plaintiff's case herein, but have necessarily had to proceed step by step and have taken each successive step with all reasonable promptness and as fast as the information supplied to them or obtained by them through their investigation has made such step possible. They have at no time delayed any necessary action either through lack of attention to the matter or intentionally.

All of which facts are just, true and correct to the best of affiant's knowledge, information and belief.

OWEN J. ROBERTS.

Sworn to and subscribed before me this 21st day of February, A. D. 1925.

(Seal) GEORGE A. MANN,
Notary Public.

My Commission Expires March 25th, 1925.

Endorsements: No. 1431 Civil United States of America, Plff. vs. Mammoth Oil Company, et al., Defts. Affidavit. Filed Feby 26, 1925. Charles J. Graham, Clerk.

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199 (Affidavit of Edward Gordon McMillan.)

I, Edward Gordon McMillan, of the City of Toronto, in the Province of Ontario, Dominion of Canada, Barrister at Law, make oath and say:—

1. I am solicitor and counsel representing in Ontario the Special Counsel for the United States of America, the plaintiff herein, and have charge of the proceedings in Ontario for taking depositions of Henry Smith Osler and others pursuant to the decree of the District Court of the United States for the District of Wyoming herein bearing date October 10th, 1924.

2. I received an authenticated copy of the said decree on October 27th, 1924, and on the same day obtained from the Honourable Mr. Justice Middleton here special leave to serve short notice of motion confirming the said decree returnable on October 30th, 1924, before a judge of the Supreme Court of Ontario. It was necessary to obtain an order from the Court here confirming the said decree and directing
200 depositions of Mr. H. S. Osler and others to be taken in order to render the said decree effective as against the said Mr. H. S. Osler and others. The said notice of motion was served on counsel for Mr. H. S. Osler and others, and it was also served in New York on Mr. Stanford of counsel for the defendants herein. The argument on the said motion was heard on October 30th, 1924, and the Honourable Mr. Justice Middleton on the same day made an order confirming the said decree and Wyoming Commission, and providing in detail for the conduct of the examination of the said Mr. H. S. Osler and others.

3. On October 30th, 1924, I received a letter from Mr. Stanford on behalf of the defendants herein requesting that no sittings of the said Commission before the Commissioners here should be held between the 5th and 15th November, and

as it was impossible to give the requisite notice to the witnesses and the defendants for a sittings of the Commission to be held prior to November 5th I agreed, at the request of Mr. Stanford, to fix a date for the sittings after November 15th. I immediately, however, consulted the Commissioners named in the said decree and order and arranged with them to hold a sittings of the Commission on November 25th, 1924, that being the earliest appointment which it was possible for Mr. Mason, one of the Commissioners, to give.

4. I caused notice of the said sittings of the Commission to be served on the said Mr. H. S. Osler and on the other witnesses to be examined, and the said Mr. H. S. Osler and the other witnesses appeared before the said Commis-
201 sioners at the sittings of the Commission on November 25th, 1924, and submitted to examination.

5. The said Mr. H. S. Osler was examined at very considerable length and refused to answer many important questions relevant to this action, particularly questions Nos. 4, 19, 21, 22, 23, 26, 28, 32, 34, 36, 39, 40, 51, 53, 73, 81, 87, 120, 121, 122, 123, 124, 125, 126, 139, 140, 141, 142, 143, 144, 146, 191, 192, 193, 194, 195, and 207, the other witnesses also refused to answer the relevant questions.

6. Counsel representing the defendants herein and counsel representing the said witnesses were present at the said examination, and at the conclusion thereof a discussion took place between the Commissioners and the said Counsel and witnesses with a view to fixing a date for a further sittings of the Commission, and I explained to all parties present that I would at once bring a motion to the Court here for the committal of the said Mr. H. S. Osler and the other witnesses for their refusal to answer the aforesaid questions, which the Commissioners had directed them to answer.

7. The said Mr. H. S. Osler was present and heard the said discussion, and although the Commissioners adjourned the Commission for only two weeks in order to obtain the direction of the Court with regard to the answering of the said questions, the said Mr. H. S. Osler gave no intimation that it was his intention to leave Canada for a period of over three months. Within two or three days thereafter the said
Mr. H. S. Osler did leave Canada and his counsel has
202 since stated in Court that he was on a pleasure trip in Africa and that his plans for the trip had been made some time previously to November 25th, 1924.

8. On the same day, November 25th, 1924, I was instructed by my principals, the United States Special Counsel, to apply to the Court here for an order for the committal of the said Mr. H. S. Osler and directing his reattendance to answer the aforesaid questions.

9. Before making the said application it was necessary for me to have the transcript of the evidence taken before the said Commissioners, and I made arrangements with the reporter to have such evidence prepared in priority to all other business on his books. In addition to transcribing the evidence it was necessary for the reporter to have photostatic copies of several exhibits to the depositions of the said Mr. H. S. Osler, and the said evidence and exhibits were not completed until December 2nd, 1924.

10. On December 1st, 1924, I consulted Mr. Osler's counsel with a view to fixing a date for hearing of the argument on the motion to commit, with the object of avoiding an adjournment when the motion should be brought on. It is the practice of the Court here to grant at least one adjournment at the request of counsel, unless there has been an agreement between counsel to proceed with the motion. Mr. Osler's counsel informed me that he could not agree to any particular date as he was busy with other litigation, and I accordingly brought the motion for Monday, December 8th, 1924,
203 which was the earliest date upon which the Judge would be sitting in Court for the hearing of such a motion. On Monday, December 8th, Mr. Osler's counsel asked the Court for an indefinite adjournment of the motion, but the Honourable Mr. Justice Riddell granted an adjournment of only two days until Wednesday, December 10th, which was the next Court day for hearing such motions.

11. The argument on the motion to commit was heard at length on Wednesday, December 10th, and I specially requested the Court to give the case immediate consideration in view of the fact that the trial of this action had been fixed for an early date in January in Wyoming. The argument of the motion lasted all day and many authorities were cited by counsel on both sides. The Honourable Mr. Justice Riddell did, however, give the case immediate consideration and delivered his judgment on Saturday, December 13th, in which he supported the rulings of the Commissioners in practically every question, and directed the said Mr. H. S. Osler and the

other witnesses to reattend and submit to further examination.

12. As the Commission had been adjourned from November 25th to December 12th, it became necessary, in view of the fact that judgment had not been delivered on the motion, to further adjourn it for one week until December 19th, 1924.

13. As soon as Mr. Justice Riddell delivered judgment on December 13th, I at once asked Mr. Osler's counsel whether Mr. Osler would return to Canada and submit to examination before the Commission pursuant to the said judgment. He informed me, however, that Mr. Osler would appeal
284 from the judgment and would not return. He also refused to accept service of the order directing Mr. Osler to reattend before the Commission, and informed me that Mr. Osler was out of reach of any judicial process in Africa. On December 18th, 1924, Mr. Osler's counsel served upon me a notice of appeal from the order of the Honourable Mr. Justice Riddell, and on December 19th the Commissioners, at my request, further adjourned the sittings of their Commission from December 19th until January 9th, 1925.

14. Under the practice here Mr. Osler was entitled to a delay of thirty days in which to perfect his appeal by filing the evidence and material used on the motion before the Honourable Mr. Justice Riddell. I was able to arrange, however, with Mr. Osler's counsel that he would expedite the preparation of his material, and he did in fact complete it and file it on or about January 12th, 1925. The appeal was then placed on the list of cases for hearing by the Appellate Division of the Supreme Court of Ontario, and appeared as case No. 99 for the month of January. As it appeared to be improbable that the case could be reached by the Court for at least two months, I obtained special leave from the Chief Justice of Ontario to bring a motion to expedite the appeal and the Chief Justice agreed to hear the motion on Monday, January 19th, being the first day upon which his Court would be sitting. Notice of the motion to expedite was served upon Mr. Stanford of counsel for the defendants herein.

15. On the return of the motion on January 19th, an adjournment of one day was granted at the request of
285 Mr. Osler's counsel, and on Tuesday, January 20th, the motion was partly argued, but was again adjourned by the Court until January 26th, as the Court had another important case before it and did not wish to devote any considerable time to hearing the argument on the motion to ex-

pedite. The motion to expedite again came before the Court of Appeals on Monday, January 26th, and was again adjourned until Wednesday, January 28th, at the request of Mr. Osler's counsel and until Friday, January 30th, at the request of the plaintiffs' counsel, who was engaged in another case in another Court. On Friday the 30th the Court heard the last of the argument on the motion to expedite the appeal and fixed Monday, February 9th, as the date for hearing the argument of the appeal from the order of the Honourable Mr. Justice Riddell.

16. Argument of the said appeal was heard on Monday, February 9th, and Wednesday, February 11th, when the Court reserved judgment. If I had not brought the application to expedite the hearing of the appeal, the argument would not yet have been heard as the case would not have been reached in the ordinary course.

17. Upon the said motion to expedite the plaintiffs asked for leave to read an affidavit dated December 8th, 1924, made by the United States Special Counsel, and specifically alleging a fraudulent conspiracy between Mr. H. S. Osler, Mr. H. F. Sinclair and others in connection with the transaction which form the subject-matter of the said Commission proceedings here.

18. Between January 24th and January 31st, 1925, discussions and correspondence took place between Mr. Rowell, who is associated with me as counsel in the hearing, and
206 Mr. Osler's counsel, with the object of securing some agreement which would result in securing Mr. Osler's testimony at an early date. Mr. Osler's counsel are Mr. A. W. Anglin and Mr. Glyn Osler, but in the absence of Mr. Anglin Mr. Wallace Nesbitt acted as Mr. Osler's counsel, and as a result of the discussions and correspondence between Mr. Rowell on the one side and Mr. Nesbitt and Mr. Glyn Osler on the other side, Mr. Rowell finally received on January 31st, 1925, from Mr. Wallace Nesbitt a letter from which the following paragraphs are taken and are the only paragraphs touching the matters involved in the proceedings here—

"Wallace Nesbitt, K. C.

Toronto, January 31st, 1925

My dear Rowell:

U. S. v. Mammoth Oil

I had already written Mr. Glyn Osler as follows:

'Mr. Britton Osler and I met the Hon. N. W. Rowell, K. C., at Osgoode Hall, and it was agreed that he should say to the

Court that he would not press the motion to admit the affidavit but wished only to set an early date for the hearing. As he was leaving for England in a matter before the Privy Council and had to leave not later than the 13th February, it was arranged that we should take it on Thursday next, as Mr Anglin was expected home by that time. This will be in the Second Division. We undertook that if the judgment of the Court was against us and the witnesses were ordered to answer, all the witnesses here would attend at once and answer so far as they had anything to tell; that we could give no undertaking as to Mr. H. S. Osler, in face of his specific instructions, but personally I would advise him against an appeal, but if he saw fit to take it we would notify them and that we would expedite the application for leave to appeal. We also undertook that if they wished to press in the higher Court for the admission of the affidavit we would not take as an objection the fact that the motion was withdrawn in the Appellate Court.

I am advising you so that Mr. Anglin may be fully advised on his return of the precise situation.'

So far as I can see this is in accord with your letter.

207 Of course, if the Court should hold the judgment so that the application for leave could not be made at the approaching sittings, it would be made at the earliest possible moment."

19 Mr. Wallace Nesbitt is Senior counsel for the firm of which Mr. H. S. Osler is a member, and the other witnesses are either members, clerks or employees of same firm.

20 On the argument before the Court of Appeal on February 11th, I requested the Court to give early consideration to the case on account of the fact that the trial of this action was fixed for March 9th in Wyoming. It is the practice of the Court of Appeal only to deliver judgment in open Court and as the said Court (this) not sit during the week of February 16th it was not to be expected that judgment would be delivered during that week. I fully expect, however, that they will deliver judgment in the appeal on Monday February 23rd or very shortly thereafter. If the said judgment is in favor of the plaintiffs all of the said witnesses except the said Mr. H. S. Osler will by virtue of Mr. Nesbitt's undertaking be prepared to attend at once before the Commission and give their testimony. I am now informed by Mr. Osler's counsel and believe that Mr. Osler himself is in Cairo on his way

home from Africa, although he is at present in a hospital with a slight attack of blood poisoning, but it is not anticipated that his return will be long delayed on that account.

308 21. By virtue of the agreement with Mr. Osler's counsel as set forth in the aforesaid letter of January 31st, 1925, it appears that they are to notify me as soon as Mr. Osler decides whether he will appeal from the Court of Appeal to the Judicial Committee of the Privy Council in England in the event of the decision of the Court of Appeal being against him. So far I have not been advised by Mr. Osler's counsel that Mr. Osler will appeal further if the decision is against him, although he has agreed to let me know as soon as he has any definite word as to Mr. Osler's intentions regarding an appeal.

22. If Mr. Osler should decide to appeal from an adverse decision of the Court of Appeal his application by virtue of the agreement between his counsel and the plaintiff's counsel is to be expedited. The Judicial Committee of the Privy Council is sitting at the present time and will continue to sit until probably about the middle of March. There is a further sittings to hear Canadian appeals in April. If Mr. Osler should decide to appeal from an adverse decision his application if too late to be heard at the present sittings should certainly be heard at the April sittings of the Judicial Committee of the Privy Council. The Judicial Committee is, of course, the Court of last resort and if they decide the appeal against Mr. Osler he would have no alternative but to attend and answer the disputed questions.

23. In my opinion the proceedings to compel Mr. Osler to give his testimony have been pressed by the plaintiffs' counsel both in the United States and in Ontario with every possible despatch. The proceedings have reached the present stage in a much shorter time than is usual in similar 309 matters in the Courts here, and I do not believe that the plaintiffs have left anything undone which could have further expedited the taking of Mr. Osler's testimony.

E. G. McMILLAN

Sworn before me at the City of Toronto in the Province of Ontario this 21st day of February, A. D. 1925.

THOS. REID,

Notarial Seal.

A notary Public in and for the Province of Ontario.

Commission is for life.

No. 1431 Civil S. C. O. United States of America vs Mammoth Oil Company et al. Affidavit E. G. McMillan.

Filed Feby. 26 1925. Charles J. Ohmhaus, Clerk. Reid Wood Wright & McMillan.

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210 (Proceedings and Argument of Counsel in Connection with Hearing of Motion for further Continuance.)

On February 26, 1925, in presenting the application for a continuance filed February 23, 1925, the following proceedings were had, to wit:

Mr. Pomerene for the plaintiff said:

"Now, if the Court please, I think that in the years of my practice no one has ever accused me of delaying a proceeding. I think that the same may be said of Mr. Roberts. I realize the full responsibility of courts in this matter to both parties. I realize that the purpose of all courts is to administer justice. I realize very fully that sometimes courts and counsel both are criticized because of what is known as the law's delay, and we do not want any delay here save and except what we regard as necessary, and if I may take a few minutes of the Court's time for the purpose of kneading together these facts in order that I can make it clear, at least to myself, what this situation is, permit me to say that after discovering that this money was being deposited in the bank, the Dominion Bank of Canada, New York Branch, and after we learned that it was Col. Humphreys who had sold this oil to the Continental Trading Company, we exercised and sought by every way through our investigators, and by a visit which Mr. Roberts and myself made personally to Toronto, for the purpose of interviewing Mr. Osler, and, frankly, though he was not disposed to give us information, we got some information which gave us leads. The Senate Committee which had this matter in charge had not heard of or gone into the matter which we regard as the vital evidence in connection with this case, and now what is the situation? We find that this contract or lease was made April 7th, as it is alleged in the bill of complaint, it was kept secret for weeks. Later on, some time prior to that, on November 17th, 1921, the contract was made between the Humphreys companies and the Continental Trading Company for the sale of this oil, and
211 on that very day the charter was taken out in Ottawa, and at this conference, as appears from those other affidavits which Your Honor will remember, there appeared

in the Vanderbilt Hotel of New York Osler, representing the Continental Trading Company and its President, and he signed the contract on that day. There appeared also Col. Robert Stewart of the Indiana Oil Company, which was a half owner in the Sinclair Crude Oil Purchasing Company—

The Court: Is he out of the country?

Mr. Pomerene: No, he is not out of the country, he is under subpoena, and, I may say, he is not a very willing witness.

The Court: Senator, may I ask you a question?

Mr. Pomerene: Surely.

The Court: You admit that these three witnesses, whose testimony you are attempting to secure, are unwilling and probably adverse witnesses, aren't they?

Mr. Pomerene: Yes, sir.

The Court: Supposing you get their testimony and it is contrary to your contentions; what are you going to do about it?

Mr. Pomerene: We will, if we get it, have the right to cross-examine, and such a contingency as Your Honor suggests is not going to happen in our judgment, and I say that out of the abundance of the work that we have done in this connection. But that is neither here nor there,—we are not asking for this continuance on the ground of the absenteeism of O'Neill or of Blackmer; it is not claimed, and we have not claimed, at least we have no knowledge on that subject, that Stewart was a party to the organization of the Continental Trading Company, Limited. Osler was the man who did this; Osler had organized his corporation with his law partners and the clerks in his office. They were the directors and keepers of the books of this corporation. These dealings were had—we will have before Your Honor when the times comes the books of the bank which show these transactions and show the deposit of these moneys to the credit of the Continental Trading Company, Limited, as well as their disbursements in the form of three and a half per cent bonds, and their delivery to H. S. Osler.

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The Court: You already have presented that in your former application for a continuance.

Mr. Pomerene: That is true, but if the Court please, when Your Honor granted that application for a commission Your

Honor felt we were entitled to that information if we could get it. Later on, when this matter came before the Commissioners that were appointed in Canada, one of whom is a member of the King's Council, and a high class lawyer, they were of the opinion that we were entitled to that evidence and ordered that witness to answer. The contempt proceeding was taken then before the Superior Court. In different phases I think it appeared before four or five of these different Justices at the various hearings, and finally on the merits of the case it was heard before his Honor, Mr. Justice Riddell, and Mr. Justice Riddell in a very carefully prepared opinion, which no doubt Your Honor has seen, said that Mr. Osler must answer and give us that information, and, meanwhile, he, a member of the King's Council, under process, knowing that this appeal was pending, leaves the country and goes to Europe and thence to Africa on a hunt. And now, after the appeal was taken from Mr. Justice Riddell's decision to the Appellate Division of the Superior Court, I think that it very seldom happens in this country that proceedings in Court are more expeditiously pressed forward than they were in the Canadian Courts, and while this affidavit of Mr. McMillan's points out the fact that he was expecting this decision to be rendered on the 23rd of the
213 month, which was Monday, I have been advised since I came here, through the telegram to Mr. Walton, that the Court was reserving their decision and it would not be handed down until the latter part of next week, or some time next week. Now, then, we have got the opinion of this Court that we are entitled to it, of a Commissioner, of the Justice of the Superior Court who first heard this contempt proceedings, and because the witness is away, and because of an appeal which he has taken, can it be said that "No, no further continuance shall be granted, the Government shall be denied that evidence which we know exists and which we believe we can obtain?"

The Court: Do you believe now that he is going to carry his appeal on through the Courts, or do you believe that he is coming back and voluntarily testify?

Mr. Pomerene: If the Court please, such an opinion as I think Your Honor must understand—

The Court: It just shows the indefiniteness of the situation.

Mr. Pomerene: I realize it; I realize it very very fully, but what would be the situation when we got into the trial

of this matter? I cannot assume that a member of the King's Council is going to defy not only this Court but the Courts there. Ought our Courts or the Canadian Courts to be put in a position where it can be said that a recalcitrant witness has outwitted the Courts? We are advised in these affidavits which are filed here that the witnesses who are now in Canada, if this decision of the Appellate Division is against them, will appear and testify to what they know. I am satisfied they know some things about this. I am not going to be standing before Your Honor and hazard an opinion as to exactly what it is; I can hazard an opinion as to what it ought to be.

214 The Court: The point I cannot see, admitting that these witnesses are unwilling and adverse—you have the right to assume that their testimony will be as unfavorable to you as it possibly can be. Now, then, if it is that way you are bound by it unless you can disprove it or offer something to the contrary. If you have something to the contrary you have the evidence itself. You, certainly, Senator, would not contend as a practitioner of long experience before the Bar, that you can go into Court and depend in the main, in presenting your case and offering evidence, on unwilling and adverse witnesses.

Mr. Pomerene: No, if the Court please, I recognize that very fully, but I recognize the fact that many a case has been made out of adverse witnesses, and I think that we have the opportunity to examine those witnesses; if we have that opportunity we will be able to show to Your Honor that there was something "rotten in Denmark". Now, what is the situation? We know up to this particular point that Mr. Fall had these dealings with Mr. Sinclair. We know that these bonds got into Fall's possession very shortly after these bonds were distributed in New York. These affidavits show here $230,500 of bonds, growing out of this oil deal—

The Court: You have that evidence now, I take it, from your affidavits?

Mr. Pomerene: Oh, yes, we have that.

The Court: Now, then, the connecting link is to show that they passed from Sinclair to Fall through this Continental Trading Company.

Mr. Pomerene: That is our expectation.

The Court: Doesn't your evidence show that now? If you say you have evidence that Sinclair is connected with
215 the Continental Trading Company and that these bonds were purchased by the Continental Trading Company subsequently and that they subsequently found their way into the possession of Fall, wouldn't the evidence you now seek to obtain be cumulative and corroborative of that which you now have?

Mr. Pomerene: I say "yes" and "no". I do not mean that; yes, it would be corroborative in part, but, more than that, it will be affirmative and direct proof, as we believe. You have got this situation—there in the hotel at New York Sinclair, a large owner in the Consolidated Oil Company, which is the owner of one-half of the stock of the Sinclair Crude Oil Company, Stewart, representing the Standard Oil Company, which owns another half interest, O'Neill, representing the Prairie Oil & Gas Company, and after these deals are made you have Mr. Osler, on the same day, in behalf of the Continental Trading Company, reselling this oil at an advanced price to these guaranteeing companies, the Sinclair Company and the Prairie Oil & Gas Company.

The Court: Yes, you have the testimony now not only affirmatively by oral testimony, but you have the documentary evidence.

Mr. Pomerene: Right, but here is where the evidence is not as strong as we would like to have it. It might of course be claimed, and probably would be claimed on behalf of the defendants here, that we do not know whether this money and these bonds came from Stewart or from Blackmer or from Osler or from O'Neill, and that is the point we desire to make clear, and which we believe we can make clear if we can get these witnesses.

The Court: You are guessing that you can?

Mr. Pomerene: Oh, I understand that. I cannot say to Your Honor, and Your Honor would not expect me to
216 say, and I would not say to you professionally that we can get it, but we believe that because of the persistent efforts to deny us this evidence that we are on the right track there, and there is so much involved in this matter it is not only a question of property but it is a question of public morals—that we think that under those circumstances we ought to be entitled to it. I can only reiterate what I said a moment ago here, that for months we have been pursuing this, and I do not think that my good brethren on the other

side will for one moment claim that we have been guilty of any negligence on this matter at all.

The Court: I think your showing along that line is perhaps sufficient, but I recollect, Senator, with that earnestness you insisted in the Court room at New York City, when this matter was taken up by consent before me upon an application for a continuance by the defendants, and that you urged with equal earnestness at that time that the matter was of such importance to the public that it must be tried immediately.

Mr. Pomerene: That was my desire, and I want to say to you now that it ought to be tried at the earliest moment, which can be consistent with the rights of the parties hereto —I recognize that.

The Court: It was evidently your opinion at that time that an immediate trial was necessary and no continuance should be granted to the defendants.

Mr. Pomerene: Let me say to Your Honor that it was our opinion then, very earnestly, that we would get this testimony when they were about it, and directed by the Courts to get it; that is where we have been disappointed, and that is the reason for it, and now the question is whether or not under those circumstances, because we are dealing with re-
calcitrant witnesses, that they can be in a position
217 where they have outwitted the Courts of the United States, and of Canada as well.

The Court: I do not think it is a question of outwitting the Courts.

Mr. Pomerene: Well, I do not know what I can add. I would not be here if I did not think we were entitled to this. I recognize the fact that we have been before Your Honor several times and have pressed this with all earnestness, as we have pressed the investigation with all earnestness, and my own judgment is that when this man Osler gets back we will get at least a part of this evidence we want, and it is for that reason, in behalf of what I believe is the justice of this case, I ask for a continuance in order to enable us to get it. I think that is all I care to say."

218 Beginning on page 175, Mr. Walton, for the plaintiff, said:

"If the Court please, counsel has suggested that we have made no showing that Mr. Osler will testify. First, we made

application to this Court for a commission to take his testimony—we deemed the testimony material, and we take it that the Court did. We applied to the Canadian Court upon that commission to have the witness required, by order of the Canadian Court, to testify; that order was made. It must have been based upon the theory that their testimony would be material.

Certain questions were asked—a copy of which I have before me—some of which were answered, others refused, and in some an exception claimed. An application has been made to the Canadian Courts to require this witness Osler to testify. The Canadian Court has required him by order to answer certain questions. Appeal has been taken, and that appeal has been heard, and, as we are informed, a decision will be had next week.

Now, counsel says we do not know what the decision will be, we do not know whether they will take an appeal or not, we do not know whether Osler will testify if the decision should be against him. That is true; we have made the best showing that we could make; no one can tell what the position of the Court will be, but we believe that inasmuch as the evidence is material, as found by this Court, and as found by the trial Court in Canada—

The Court: May I interrupt?

Mr. Walton: Certainly.

The Court: To give you my theory—I assume from the showing that was made before on the application for a continuance that the Government considered the materiality of the Osler testimony was in that he refused to disclose the name of his client.

Mr. Walton: That is part of it, if the Court please.

The Court: Now, I understand, at least from the
219 theory advanced by your opponents, that the materiality is the proposition of the delivery of these bonds on or about a certain time.

Mr. Walton: If the Court please, the materiality as I view it, we want to know who his client is, and he has refused to divulge it.

Mr. Lacey: That is not in your present motion.

Mr. Littleton: That is not in your motion.

Mr. Lacey: Not at all; you have not asked as to that

Mr. Walton: We have asked him as to how dividends were paid by the Continental Trading Company, and who the stockholders of the Continental Trading Company were, and to whom the dividends were paid.

Mr. Lacey: It rests upon this motion, and not upon that testimony.

Mr. Walton: Now, if the Court please, we have traced, as Senator Pomerene stated,—we have evidence as to the purchase of these bonds from various people, various brokers by the New York Branch of the Dominion of Canada Bank; we have evidence outside of that which we now seek which will show that these bonds were, on or about May 8th, delivered to Mr. Osler personally. We have evidence that a short time later, something like three weeks later, those bonds appeared in the possession of Mr. Everhart, Sinclair or Fall.

What we seek is the transactions and circumstances under which those bonds got from Mr. Osler's possession to Mr. Everhart's possession, broadly speaking.

The Court: Yes, and I am assuming that is the theory, but I am unable to see how you are going to establish it by this witness Osler, assuming that that is your theory,
220 and that you are correct in your theory, for the purpose of the argument.

Mr. Walton: If the Court please, Mr. Osler has already—I do not know as I should say—answered certain questions, but made certain statements, among others, of which, appearing on page 6 of the testimony, beginning on page 5,—

"In the course of the discussion with my client I reached the conclusion that litigation should take place it would be difficult and embarrassing unless the business was incorporated.

and so forth."

Then he goes on to say,

"And that I was advising him at that time that that would not prevent me from carrying out my instructions and carrying on and conducting the business as confidential legal business."

"The intervention of the Company, having been accorded, the Continental Trading Company, Limited, was incorporated, and application made through my office, the officials

being all members or employes of my firm preferably a clerk in my office."

Then he goes on, at the bottom of the page,—

"The incorporation of the company did not in any way alter or affect the nature of such business or affect the way in which it was carried on."

And then "that the business of the company was carried on under his direction."

Later on, on page 10, as to the naming who these other witnesses are, that they are all members of his firm or clerks in his office, "and that they knew only such things about this transaction as they learned from him"

Now, that is the reason we say we do not know just what part of this transaction these witnesses, who are now in Canada, can testify to, but this man has in his statement shown that he incorporated this company, that he handled the affairs of the company personally and through his law clerks, and I submit to Your Honor that from the testimony
221 he has given it is not fair to say that we have exhausted our questions in trying to elicit from that witness that testimony.

The Court: That was the theory I had in granting the original continuance, but here now it seems that you have not answered my question as to whether your motion now is upon the materiality of the evidence as to who his client was. That is what I thought was material.

Mr. Walton: Yes, if the Court please, that is part of it, as to who the client was.

Mr. Lacey: It is not in the motion.

The Court: Judge Lacey says it is not in the motion, and that is the reason I am asking about it. I think we have got to depend upon an orderly procedure as to what the motion really sets forth, as to its terms, and whether there is a showing for a continuance or not. I do not think we can assume that or something else. It was in the other motion for the continuance that this evidence in regard to the identity of the client was material, and that the witness had refused to answer questions concerning that, and the necessity of having that testimony was the basis of that original motion for a continuance, and I thought so myself, because my theory was, by reading between the lines, that probably the defend-

ants in some way were connected with being clients of Mr. Osler.

Mr. Littleton: That was the impression that was sought to be left by some of the argument had before Your Honor.

The Court: That was the impression I had, but I did not think it was necessary to carry it to a conclusion, to carry it to that extent that it was necessary for me to determine that probably it was a material element in the case.

Mr. Walton: If the Court please, we ask among other
222 things in this motion—we state that we expect to show that large amounts of bonds purchased by the Dominion Bank of Canada, New York Branch, were delivered to H. S. Osler, were by him distributed or caused to be distributed by the Continental Trading Company, Limited, a large portion of said bonds, and especially to Harry F. Sinclair, from whom the said Albert B. Fall received a substantial portion of them.

The Court: Now, didn't he testify on that in the evidence we already have?

Mr. Walton: He has answered some questions, if the Court please.

The Court: He answers especially in this regard that he has no recollection of having distributed them previous to the fall of 1922. Now, that was his testimony, as I recollect it, and, another thing, it seems to me, as I remember—I read that entire transcript of the testimony on the other continuance—that he had no recollection as to how the proceeds were distributed, and has no recollection on that of the way he had distributed these things to his client and the client had distributed them, isn't that true?

Mr. Walton: I do not understand that, if the Court please. On page 5, "How were the dividends declared?", and he answered, "I think that comes within the privilege claimed". He refused to do that, as I understand it from the testimony; he says he was the President of the Continental Trading Company, that every officer of the Company was either a partner or connected in some way with his office; that the company did distribute dividends, and he says that these various officers did this under his direction. Now, it seems to me—

The Court: Yes, but of course if they were distrib-
223 uted, after having laid your foundation as to why you want this connecting link, if they were distributed

after May 1922 of course the evidence would be immaterial because the bonds you desire to trace were found in the hands of Mr. Everhart, or whatever his name is, in May, 1922, or shortly after May 1922.

Mr. Walton: If the Court please, that is true, but it strikes me from the testimony of this witness that we have not had a chance to insist upon answers to such questions as might refresh his recollection upon that point. He has answered some questions, if the Court please, but from a consideration of his testimony it seems to me, and I do not think the Court could help but feel, that Osler so far as he has testified, and from the statements he has made, has endeavored to evade answering questions, and certainly we ought not to be bound by any answers he gave us until we have had a chance to refresh his recollection or get through examining him as to certain points. It certainly would not be fair in a case if the witness said that he did not remember to not be allowed to ask him other questions along that line in an effort to refresh his recollection on that.

The Court: But under the questions which he answered definitely, that he had no recollection, I think we ought to reasonably assume that he answered those as he would answer them if we had him on the witness stand for six weeks.

Mr. Walton: If we asked him in what way these dividends were distributed.

Mr. Lacey: You had no right to interrogate him as to things done after May.

Mr. Walton: If the Court please, that question did not apply to May "How were the dividends declared?" "I think that comes within the privilege claimed".

224 Mr. Lacey: But he has no recollection of any distribution at that time, and now the recollection he does have in distribution made later. They are not authorized to inquire as to that, they have nothing to do with this case.

Mr. Walton: If the Court please, counsel has said that there is no proof that Osler will testify further. That if a proceeding has been instituted to compel him to testify, and if he is ultimately by the Court of last resort required to testify, that we are justified in believing that he will testify; otherwise no showing can be made that any witness will ever testify.

The Court: The only thing that has not been disclosed, that I have a recollection of here, that he did not testify to,

was the name of his client. Suppose we make him testify as to the name of his client.

Mr. Littleton: With that under the ruling of the Commissioner then everything else that was told him by his clients is within the rule of privilege. They do not pretend to say that he would say his client was Mr. Sinclair; it is not true, it was not Mr. Sinclair.

Mr. Walton: He has testified that he was President of this company, that these various clerks and others connected with his offices were officers of the company, acting under his direction. He has not testified yet who the stockholders or warrant holders were to whom dividends were distributed.

The Court: Does he not say in some place that these warrants were delivered to his client and he did not know how they were distributed?

Mr. Walton: Yes, I think he says in one place.

Mr. Lacey: Yes, delivered to his client.

The Court: Do you expect him to testify now—to say that that was not true and he does not know?

Mr. Walton: Well, if Your Honor please, and we do expect to show him that he has furnished a list of his stockholders to other persons.

The Court: If you know he has why not furnish that yourself? If he has furnished it,—that is your evidence. The difficulty is that your proposition is that you expect to put this man on the stand so far as I understand your theory, and then by your asking him questions you would expect to prove he is a liar, which would be your evidence, proving your contention.

Mr. Walton: No, Your Honor, to refresh his recollection.

The Court: Why do you want to refresh his recollection if you have the testimony to disprove it before you put him on?

Mr. Walton: If we prove by him who they are by his testimony—we would not be allowed to use as evidence what these other men have been told by him, except for impeaching purposes; it would not be evidence of the facts, it would not be evidence of the case, but certainly if you ask the question and the witness says "I don't know", couldn't you say "didn't you do so on such and such a day?", "didn't you say

so to such and such a person?", to refresh his recollection? That is what we want to do, have a chance to refresh his recollection on this question, on these points, to get from him the name of his client, who the stockholders are, how these dividends were distributed, and to whom.

The Court: Of course I have to assume that this is all a theory and not contained in the showing in any way.

Mr. Walton: If the Court please, I understood the Court wanted to know what our theory was, what we wanted from this witness, why we want this witness, and why his
226 evidence is material, and that is the reason I am trying to tell Your Honor why we think it is material, and certainly it seems to me that the Court wants that showing, even though another Court has required him to appear and testify. They say we do not know when we will get him. We have the affidavit of Mr. McMillan that his attorneys have advised him to testify without further appeal; we have the showing that he has left Cairo, Egypt, bound for Canada with the intention of only stopping a few days in London, and we expects when he gets back into the Dominion of Canada that the Court will reach out with a strong arm and either compel him to testify or commit for failure to do so.

The Court: In the face of that you have also the appeal to some Court in England, so which will you believe and [depend] upon?

Mr. Lacey: In his statement direct, instead of testifying the way they think he will he testifies the other way.

Mr. Walton: It seems to me from these affidavits that the Court can see from this testimony that if he has given any statements as to testimony he has not given, that we ought to have the right to interrogate him fully and to refresh his [collection], if necessary.

Mr. Lacey: Go fishing?

Mr. Walton: No, not go fishing, not go fishing, but it seems to me that if a witness leaves the jurisdiction of this Court or leaves the jurisdiction of any Court that the Court should require the witness to testify and grant such continuance as is reasonably necessary to require him to testify.

The Court: But you must remember that this is not a criminal case where we are chasing some fellow around the world, who is seeking to escape from justice; we are trying a civil case.

227 Mr. Walton: I realize that, if the Court please.

The Court: In which there are two sides—

Mr. Walton: Very true.

The Court: And the defendants have rights in this case just the same as the Government, even though it is the Government.

Mr. Walton: That is very true, if the Court please.

The Court: And I think we should view the situation in that light and not in the light of simply an ultimate desire to get some unwilling witness to come back to this country and testify.

Mr. Walton: I realize that, if the Court please, but still it seems to me that the Court in this case is trying to arrive at a fair reasonable conclusion as between the contention of the plaintiff and the contention of the defendant. If the Court has issued a commission to take testimony and a Court of that foreign jurisdiction has entered judgment to require that party to testify, and he is away from home, and had been away from home, as the evidence shows he has, and his attorneys have advised him to testify, that that is as strong a showing as we can make, and he will probably testify—

The Court: If he said he was not going away, and then he went away, I think it is reasonable to assume that when he said he was coming back that he is not coming back.

Mr. Walton: If the Court please, it seems to me that the contention of the defendants' counsel in this case could be read into any motion for a continuance that you could presume a witness would not testify until he had testified.

Mr. Littleton: Especially one that has refused already.

Mr. Walton: Yes, here is one who has refused, and he stated he refused as a personal right as a barrister of the Dominion of Canada. The matter has been put up to
228 the Courts of Canada, and thereafter the Courts have required him to testify. He has appealed to the Appellate Court and we expect a decision of that Court next week, as shown by the affidavit and the telegram from Mr. McMillan. For a certainty I take it that a man of the standing of Mr. Osler, a member of the King's Council,—it cannot be presumed that he will refuse to testify if the Appellate Court requires him to do so.

The Court: I presume he will do what he said he would do, that he will appeal it to some Privy Council in England; the record here shows that.

Mr. Walton: If the Court please, our showing here is that they are now in session, that they will be in session to hear Canadian cases the middle of April, and Mr. McMillan's affidavit showing procedure shows it will be brought up for hearing at least, if not during the present session, during the April session.

The Court: If that follows the usual habits and customs of the rest of his you do not know when it will be decided?

Mr. Walton: There has been one appeal since December, we are expecting a decision in a few days. Mr. McMillan sets forth the procedure, that when they apply to the Privy Council for what corresponds to our writ of certiorari he will file a caveat, which gives us action on the application for the writ rather than waiting for the matter to be sent up. I think Mr. McMillan's affidavit shows the utmost diligence in order to get the testimony of this witness. Now, it seems to me that if this case is not continued a sufficient length of time to get the testimony of this witness, in case he comes back and does testify, that the order of this Court for the deposition has been of no effect, the proceedings in the Canadian Courts to require the witness to appear and testify
229 have been of no effect, and that we have allowed a witness to absent himself and thus defeat the effort made to require him to testify in the case.

The Court: I do not think that element comes into it. He has taken an appeal and he could not be compelled to testify until his appeal had been decided, but it has not yet been decided.

Mr. Walton: That is true, but I say if the appeal is decided next week, if he is required to testify by the Appellate Court, it would be impossible to get his testimony, if he appeared immediately, and get it back here to us in time for the 9th of March.

The Court: You must remember that the question here is the materiality of the Government having that testimony. I am not concerned whether the English or Canadian Courts want to vindicate or establish some principle of law—I do not care a thing about that. This Court is not going to run in the manner of disposition of some litigation, and run along to allow these people to demonstrate some legal principle.

Mr. Pomerene: I would like to ask the Court to keep in mind this fact. My good friends on the other side of the battle here have indicated the sacredness of the professional relation, and I do not yield to them in my admiration of that, but the fact of the matter is that Mr. Osler organized this corporation, that it was an agency of the Canadian Government, that whatever was done was not done by Osler, as we contend, as a lawyer, but he was the President of that corporation and he is not entitled to hold the things which he did as the President of that corporation, or the things which that corporation did, or the things which officers of that corporation may say, as a privilege matter, as was said forcibly, as I am informed, and rather facetiously by one of the Judges of the Court of Appeals, that if it comes to the point where a solicitor organizes a corporation and then claims everything that that corporation does or the client as privileges, solicitors will get much larger fees from their clients in the future by doing that kind of work than they get now. Now, as President of that corporation he knows who those shareholders are—

Mr. Lacey: He said he did not.

Mr. Pomerene: If we are to be precluded by a statement of that kind I know that he said he handed a list of those stockholders to a certain party that he claimed as his friend, and did not claim as his client at that time; I have got first hand knowledge of that from Mr. Osler. I did not mean to go into that, however.

The Court: That is, you know this, that some man has told you that Mr. Osler said that?

Mr. Pomerene: No, I did not mean that, I mean that Osler told me he handed that list to somebody; that is what I mean by it. I did not expect to make that statement but it comes to a point where I think I ought to make it.

The Court: I did not mean to drag it out.

Mr. Pomerene: All right, I always like to be frank with the Court in a matter, and further than that, let me make this suggestion—we are advised, and I am disappointed that that decision has not been handed down earlier, we fully expected that it would be, but we are told that it is going to be handed down the latter part of next week. We are told in that affidavit that the solicitors, and I endorse everything my brothers have said about the high standing of the solicitors on the other side—Mr. Anglin and Mr. Besbit are both very

high class men, a credit to the Canadian Bar—they have said that those witnesses will answer all they know about
231 this matter; they were directors and clerks, and this one young woman, I have forgotten her name, it appears here in affidavit, was the Secretary of the corporation and she knows a good deal about these things. We have not even been permitted to talk with her on that subject at all. More than that, let me say this: It does not appear in the record here, but is the fact nevertheless, that Mr. Rowell, who was one of our solicitors, is in England now in some matters he has before the Privy Council, and, as has been said, while an appeal would lie from the Appellate branch of the Superior Court of Canada to the Privy Council it must be by proceedings something similar to a writ of certiorari, and Mr. Rowell has gone over there prepared to file a caveat in the event this decision should sustain Mr. Justice Riddell so as to expedite the matter, and we have the promise of those solicitors that they will aid in expediting the matter even if an appeal is taken. Now, then, it does seem to me that under those circumstances we certainly ought not to be deprived of the right to get the evidence of this witness and these witnesses when we have these promises of those solicitors on the other side as to what they will do, and I am not doubting that at all. I think of them as I think of my brethern at the table, if they made a professional statement or agreement with me I would never question it, and for those reasons I feel we ought to have a reasonable opportunity to get this evidence when we feel that we have done everything within our power to get it. I would have to go into the trial of this case feeling that we have been handicapped if we were prevented, and if we were culpable in delaying this matter I could not have one word to say, but that is my feeling about it.

The Court: If the Court should relieve you of the responsibility then you could not charge anybody with it and
232 you could relieve your conscience?

Mr. Pomerene: I would regret it, I will say, exceedingly.

The Court: I will take the papers and look into this matter.

Mr. Lacey: Let me make this one suggestion. I think that like every other case this is to be tried on the motion made and not on the statements of counsel as to what they expect to do by cross-questioning and all that, and on the motion they show that they have other witnesses to prove

these things; that itself is ground for denying the motion. On the motion as made they do not show the probability of getting the evidence because they have introduced a record here which shows it is not probable. Now, they talk about the right to get the evidence, about the right to chase a sunbeam, the right to chase a rainbow, as against solid, real, substantial rights of this defendant of which the Court knows. That is the case.

The Court: I would like to ask if that Canadian testimony is a part of the record of this Court.

Mr. Lacey: They introduced it on this motion this morning.

The Court: There is a copy on file, or it was on file before.

Mr. Lacey: The copy you had before was my certified copy. If both counsel on the other side and ourselves agree the Court might take it.

Mr. Pomerene: Right.

Mr. Lacey: There is a copy introduced this morning.

Mr. Pomerene: Right.

The Court: If there is not I want a copy introduced and marked in this Court to remain here."

233 Endorsements: In Equity. No. 1431. In the District Court of the United States for the District of Wyoming. United States of America, Plaintiff, vs. Mammoth Oil Company, a Corporation of the State of Delaware, et al., Defendants. Matter appearing in Transcript of Argument, of Motion for Continuance, of February 26, 1925, as follows: Beginning with last paragraph on page 154 of stenographer's transcript, and running to end of first paragraph on page 162; that is, to the end of the paragraph ending before the words, "Mr. Lacey: May it please the Court"; beginning at page 175, second paragraph from bottom which begins, "Mr. Walton: If the Court please", to bottom of page 189. Filed Sept. 25, 1925, Charles J. Ohnhaus, Clerk.

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847 (Opinion of District Court upon denial of Motion of Plaintiff for further Continuance.)

Atlee Pomerene, Special Counsel for the United States, and Albert D. Walton, U. S. Attorney, for Plaintiff.

John W. Lacy and Martin W. Littleton for Defendants.

Decided February 27, 1925.

Judge's Memorandum.

Kennedy, Judge.

This matter is again before the court upon the application of the plaintiff for a further continuance of the trial, now set for March 9, 1925.

The unusual nature of this proceeding gives cause to refer in brief to the history of the litigation.

The suit was instituted on March 13, 1924, at which time application was made to have the property covered by the lease which is in controversy, placed in the hands of a receiver appointed by the court. That action was taken and a joint receivership appointed, the court accepting recommendations of the litigants so that each side might
848 have a receiver somewhat in sympathy with its own cause. This receivership has continued up to the present time and is still existing. The operation of the property which is an oil field, has been carried on under the direction of the court during the pendency of the litigation with a somewhat compromise policy, so as to conform as near as may be to the divergent theories of the litigants as to the proper and economic method of its operation. The litigation is now nearly one year old. Presumably of course, when it was instituted the plaintiff was in a position to proceed with reasonable dispatch to a final hearing. After the issues had been made up and depositions taken within the time provided by the rules, the court at the instance of counsel on both sides was asked to indicate the time for a trial. The court consulting its convenience gave counsel the choice of two dates, one in August and the other in October. Counsel on both sides then by agreement selected the October date and the case was assigned for final hearing on October 7th. This was in ample time months in advance of the hearing to give opportunity to both sides to subpoena witnesses and assemble evidence.

In September of last year when the Judge of this court was sitting in New York, counsel appeared by stipulation to have the matter heard there for a continuance on behalf of the defendants, setting forth various grounds of not having had sufficient opportunity to assemble their evidence, the absence of counsel and other engagements elsewhere, as the basis of said application. At that time the plaintiff, represented by its counsel, strenuously opposed the continuance, using the language at that time in substance, that their oppo-

sition was urged with all the earnestness with which they were capable and that the case was of such a nature concerning the property being litigated and the public interest, that it should be tried without delay. Presumably from these statements counsel for the Government at that time had evi-
dence, the strength of which they considered sufficient
849 to justify them in going to a trial at the date set. The reasons given by counsel at that time for the necessity of an early trial appealed to the discretion of the court to such an extent that after an examination of the causes upon which the application of the defendants for a continuance was made, the court felt that although it was the first application for a continuance it ought to stretch its judicial discretion to the limit for the purpose of affording a speedy trial and thereupon denied the motion for the continuance.

A short time thereafter counsel for the Government having secured the consent of counsel for defendants for a hearing in New York, presented an application for a continuance themselves, upon the ground that they had not been able to secure material evidence, which plea as the court remembers, was graciously met by the defendants with a consent to the continuance. This cause was thereupon continued from the October date and with the consent of counsel assigned for January 6, 1925.

Some time in December, counsel for the Government again presented an application for a continuance upon the ground that they were having difficulty in securing the testimony of witnesses in Canada. The theory which the court adduced from the proofs submitted at that time was that the witnesses there had refused to answer certain questions upon the ground that they came within the class of confidential and privileged communications between attorney and client, the substance of that matter being that the witness Osler in Canada had refused to reveal the name of his client and this was represented as being a material part of the evidence which it was necessary for the plaintiff to have in the presentation of its case. Other phases of the testimony were, however, considered. The court with great reluctance concluded that the showing was sufficient upon the assurance of
counsel that results could be obtained in the Canadian
850 courts shortly after the middle of January. The Court thereupon granted the continuance asked for on behalf of plaintiff and reassigned the case for final hearing on March 9, 1925.

Now another continuance on behalf of the plaintiff is prayed for, the basis of it being the inability to secure as yet the Canadian testimony. It seems from the proofs submitted now that when the action of one Canadian court had been secured sustaining the contentions of the plaintiff, that the witnesses had appealed their case to a higher court which still has the matter under advisement, although the theory of counsel is that a decision may reasonably be expected in the next ten days, coupled, however, with some sort of statement by those concerned that if the decision of that court be adverse, the matter will be taken by appeal to the higher courts of England. So that unless we accept the theory of counsel as to when courts might reasonably be expected to act, we have no assurance that if a continuance were granted in this case the counsel for the Government would be any nearer presenting its evidence from these Canadian witnesses a year from now than they are at the present time.

This is a civil case, with the plaintiff and defendant supposed to be enjoying equal rights and privileges before the court. The Government is suing in its capacity as a proprietor of lands and as such must be treated as any other litigant.

The court, however, is willing to assume that difficulties arise particularly in this character of a case which cannot be easily surmounted, and that due recognition must be given to those having the matter in charge in their earnest and honest efforts to secure necessary testimony. From the application now before the court, however, it appears that the chief objective of counsel for plaintiff is in securing information upon the distribution of certain bonds by the principal witnesses in Canada and the matter of the name of the client which on the former application appeared to be material, has diminished so much in importance that it is not men-
851 tioned in the present papers. The witness Osler did testify to a considerable extent before the Commissioners appointed by this court and that testimony was offered on the former application for a continuance as well as upon this. That testimony has been reread by the court in part and it now appears that the witness did testify under oath that he had no recollection of the distribution of any bonds prior to the date in April or May, 1922, when according to the theory of the plaintiff some of the bonds formerly delivered to the witness in Canada found their way into the hands of Albert B. Fall. As to this, counsel now say that if they were permitted to pursue the examination further they

could present matters which would refresh the recollection of the witness so that he would not only be able to recall matters along this line, but also matters concerning the unit or dividend certificates of the Continental Trading Company of which he was the head, and presumably the intervening agent which formed the connecting link. A further examination of the testimony in the hands of the court discloses the fact that upon the matter of the distribution of these share warrants, the witness had no distinct recollection as to their distribution and that he was unable to say from recollection who was associated in the company as owner. Counsel now contend that they would be able by certain information to refresh the recollection of the witness as to his knowledge of these warrant holders. As to why counsel did not attempt to refresh the recollection of the witness at the time the testimony was given, both the record and counsel are silent. It seems like an attempt in this respect to ask a continuance of a trial for the purpose of permitting a further examination of a witness who had already been before a tribunal to give his testimony.

If the plaintiff's case must be established by recalcitrant and unwilling witnesses who have already testified that they do not remember, with the exception that when recalled
852 their recollection can be refreshed or that they can be impeached by the side calling them, then it would be questionable as to what real evidence would be produced were the testimony secured. It seems more reasonable to assume that the witnesses having once testified, would when again recalled tell the same story, if for no other reason than to avoid prosecution for perjury. Again, if the witness should testify adversely, the plaintiff would be bound by his testimony, unless it were impeached; and if it could be impeached on material points, that impeaching testimony will be competent to establish the claim sought. This court is not particularly concerned with the fate of a witness who contests his asserted rights in foreign courts or with establishing certain principles of law there, but only with the aid which the testimony of that witness might bring to the solution of problems in this law suit.

The foregoing is directed to the merits of the present controversy, laying strictly aside a conformity to the rules which govern applications for continuance on account of securing the testimony of absent witnesses. One of the first requisites upon an application for continuance is that it shall be disclosed to the court what it is expected the witness will testify

to if his testimony be secured, and this in detail. An analysis of the application here not only fails to set this forth but in attempting to sustain the application, evidence is offered which tends to show that if the testimony of the witness were secured it would be contrary to the contention of counsel for plaintiff.

Another requisite in an application for continuance is that it must be affirmatively shown that the evidence sought cannot be proven by other witnesses, in which respect the application here is faulty. In fact, the motion itself affirmatively shows that some of the evidence at least which it is sought to be secured from the witness Osler will be presented by other witnesses, one at least of whom counsel attested in open
853 court had been subpoenaed. Another element appearing in the case is that the witness from Canada whose testimony is sought, is now sick in Egypt, adding but another element to the proposition of uncertainty. If it appeared to the court that there were any reasonable expectancy of securing the testimony desired at any reasonably near period and that when the testimony were secured it would be of any particular benefit to the plaintiff's case, the court would feel justified perhaps in straining the well settled rules of courts and giving plaintiff the opportunity to secure the evidence, but neither of these elements appear to be reasonably established by the proofs here offered. The court in the solemn and important matter of dealing with substantial property rights cannot indulge in chasing a "will o' the wisp."

The court again reiterates that the necessity of an early trial in this case from the standpoint of the protection to the property alone is imperative. It must be conceded that the defendants are entitled to a fair trial with reasonable dispatch, and yet on account of the Government being the adverse litigant, they have been compelled to surrender the possession of property which they claim, without bond, or if successful, without any hope of restitution for damage sustained to them in the suit. With all fairness it must be said that if the Government expects others to be fair in their treatment of the Government, it, itself must be fair.

For the reasons stated, the motion for a continuance will be denied and the case will stand for final hearing as heretofore assigned on March 9, at ten o'clock a. m.

854 Endorsements: No. 1431—Civil. U. S. of America vs Mammoth Oil Co. Judge's Memo on Mo. for Cont. 2/27/25. Filed Feby. 27, 1925, Charles J. Ohnhaus, Clerk.

234 (Order denying Motion of Plaintiff for further Continuance.)

Comes now the plaintiff, United States of America, by Atlee Pomerene and Albert D. Walton, its attorneys, and also comes said defendant, Mammoth Oil Company, by Herbert V. Lacey, John W. Lacey and Martin W. Littleton, its attorneys, and the motion of the plaintiff for a continuance of said cause having been heretofore argued by counsel and submitted to the Court, and the Court being now sufficiently advised, the said motion is now overruled and denied, to which order of the Court the plaintiff now at the time excepts.

And thereupon the plaintiff made its oral motion for a continuance for thirty days to obtain the testimony of the Canadian witnesses other than Mr. H. S. Osler, which motion is now by the Court overruled and denied, to which ruling of the Court the plaintiff now at the time excepts.

And the Court further announces that this cause will be for trial March 9th, 1925, at ten o'clock A. M. of said day.

Dated this 27th day of February, A. D. 1925.

T. BLAKE KENNEDY,
Judge.

O. K. as to form
A. D. W.

235 Endorsed: Filed in the District Court on Feb. 27, 1925.

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236 Petition for Reopening of the Case, so that the Depositions of Witnesses may be Taken and Added to the Record.

The petition of the plaintiff, The United States of America, respectfully represents:

1. That on or about the 18th day of October, 1924, this honorable Court issued a commission, as appears of record in this cause, for the taking of the depositions of Henry Smith Osler, Britton Osler, N. E. Strickland, Suneva Margaret Fordyce, Morley H. Breuls, Harold E. Boston, and Louis Samuel;

2. That said witnesses appeared before the Commissioner named in said commission on November 25, 1924, in the City of Toronto and were severally sworn but refused to answer

many questions put to them which said Commissioner ordered they should answer and which they refused to answer;

3. That, Special Counsel for the United States through their solicitors, brought contempt proceedings against the said witnesses in the Supreme Court of Ontario and on December 13, 1924, Mr. Justice Riddle of said Court rendered a judgment in said proceedings, adjudging that the said witnesses should answer said questions;

4. That, the said witnesses thereafter appealed the said judgment to the Appellate Division of the Supreme Court of Ontario;

237 5. That, said appeal was heard on Monday, February 9, 1925, and Wednesday, February 11, 1925, the earliest dates upon which the said Court could hear said appeal, and the Court reserved judgment thereon;

6. That, it became apparent on or about the 20th day of February, 1925, that the decision of said Appellate Court on said appeal could not be handed down in time to permit of the taking of the depositions of said witnesses and the transmittal of them to the Clerk of this Court at Cheyenne, Wyoming, in time for the beginning of the trial of said cause on March 9, 1925, the date set therefor by this honorable Court;

7. That, the United States thereupon filed its motion for a continuance of the trial of this cause in order that it might have an opportunity to take the depositions of said witnesses should said appeal be decided against them, which motion is of record in this cause and is incorporated herein by reference;

8. That, said motion for a continuance was argued on February 26, 1925, and overruled on February 27, 1925, to which exception was then and there taken in behalf of the United States of America;

9. That, the said Appellate Division of the Supreme Court of the Province of Toronto on or about the 11th day of March, 1925, and after this cause had been on trial for the third day, handed down its decision, affirming the judgment theretofore rendered by Mr. Justice Riddle and ordering said witnesses to answer said questions; a true copy of said opinion is hereto annexed and made a part hereof and is marked "Exhibit A";

10. That, the said witnesses were officers and directors or clerks of the Continental Trading Company, Ltd., and, as

Counsel believe, have knowledge and can testify as to who were the stockholders or warrantholders of said Continental Trading Company, Ltd., to whom the United States bonds purchased by the Dominion Bank of Canada, New York Branch, for the Continental Trading Company, Ltd., were delivered;

238 11. That, the records of said Continental Trading Company, Ltd., have been destroyed and the charter surrendered, and there was and is no other means known to Counsel for the United States whereby said evidence could be secured;

12. That, Counsel for the United States believe that if said cause had been continued, as prayed for in said motion for a continuance, the testimony would thereby have been secured, showing the delivery of said bonds or a part thereof to the said Harry F. Sinclair, which were thereafter delivered or caused to be delivered to the said Albert B. Fall and his son in law, M. T. Everhart, and this plaintiff believes, and therefore avers the fact to be that by reason of the overruling of said motion for a continuance, the plaintiff was deprived of a reasonable opportunity to secure said testimony, as will appear from the affidavits filed in support of said motion, and which are hereby referred to and made a part hereof;

13. That, by reason of the overruling of said motion for continuance, plaintiffs counsel had to close the depositions at Toronto, Canada, and have the same forwarded with the commission to the Clerk of this Court so that such testimony as had theretofore been taken should be available at the trial.

14. That, during the time of the trial of this cause Henry Smith Osler, one of the most important of said witnesses, was out of the Dominion of Canada and could not be served with process nor his presence obtained at Toronto for the purpose of giving testimony;

15. That, some time subsequent to the closing of the testimony in this Court in this cause, said Henry Smith Osler returned to the Dominion of Canada and to Toronto and is or will be available to testify upon and pursuant to a Commission issued for the purpose of taking his testimony;

16. That, plaintiff desires to take the testimony and to have the same included in the record in the cause so that the

same may be considered by the Court prior to the entry of findings and final decree therein.

239 17. Wherefore, plaintiff prays the Court that an order be entered

(a) opening the case for the admission of further evidence by way of depositions of the witnesses above mentioned;

(b) Granting leave to plaintiff to apply for a commission to take the depositions of said witnesses at Toronto, Canada;

(c) Granting leave to plaintiff to file said depositions, when so taken pursuant to such commission in this cause, and it be made a part of the record herein for the consideration of the court in connection with the other evidence herein.

And your petitioner will ever pray &c.

THE UNITED STATES OF AMERICA
By Atlee Pomerene
Owen J. Roberts
Special Counsel.

ALBERT D. WALTON
United States Attorney
District of Wyoming.

United States of America,
District of Wyoming—ss.

Atlee Pomerene and Owen J. Roberts, being duly sworn according to law, do depose and say that the facts set forth in the foregoing petition are just, true and correct to the best of their knowledge, information and belief.

ATLEE POMERENE
OWEN J. ROBERTS

Sworn and subscribed to before me this 6th day of July, A. D. 1925.

(Seal)

CAPITOLA G. ALLISON
Deputy Clerk, U. S. District Court District of Wyoming.

240 Appellate Division

Copy of Reasons for Judgment of First Divisional Court delivered 11th March, 1925.

Rowell, K. C., and E. G. McMillan for the United States of America.

Anglin, K. C., and G. R. Munnoch for H. S. Osler and other witnesses.

United States of America,
vs.
Mammoth Oil Company and others.

Ferguson, J. A.:—Appeal by Mr. H. S. Osler and other officers and directors of the Continental Trading Co. Ltd., called as witnesses at the trial of this action pending in the United States Federal Court (Wyoming District), from an order of Hon. Mr. Justice Riddell, directing them to answer certain questions which they refused to answer before a Commissioner appointed by the United States Court to take evidence here, cross appeal by the United States from a refusal by the Hon. Mr. Justice Riddell to direct the witnesses to answer questions which the Commissioner has ruled they need not answer.

The questions the witnesses seek to be excused from answering divide themselves into two classes, or under two heads:

(1) Those seeking information as to the acts of the Continental Trading Co. Ltd., and in reference to the information on which the corporation and its agents acted in the transactions referred to in the affidavits and evidence, and in reference to the distribution of the assets of the corporation.

(2) The name of the person who Mr. Osler says retained him in New York to prepare, revise and settle contracts for the purchase and resale of oil, and to act as agent of his client in reference to the [preformance] of such contracts.

The appellants contend:

(a) That the information sought was communicated to Mr. Osler as the professional legal adviser of his employer, or was obtained by Osler in the course of his employ-
241 ment as such professional legal adviser;

(b) The Continental Company and its officers were merely confidential agents and employees of Mr. Osler, used

and directed by him as professional legal adviser of his client for the better performing of his duties to his client, and that therefore all communications be made to the Corporation or its officers and all transactions of the corporation and all the acts of its directors and officers are privileged.

The respondents contend:

(1) That the Continental Company was not an agent or employee of Mr. Osler or of his client, and did not act as such:

(2) That Mr. Osler was not employed or retained as professional legal adviser of his employer, but as his commercial agent.

(3) That even if Mr. Osler was retained and employed as professional legal adviser of his employer, yet in acting as President of the Trading Company he must be regarded as agent of the Corporation rather than as either agent or counsel of his client and that if the corporation was neither the agent nor employee of Mr. Osler or his client, Mr. Osler and his co-officer must disclose the business of the Trading Company and the information on which he and they acted, in carrying on the business of the corporation and in the distribution of its assets.

(4) That the name of Mr. Osler's client was known to Mr. Osler before the alleged retainer and was therefore not made known to Mr. Osler in confidence.

(5) That if the name of Mr. Osler's client was knowledge on which the Corporation as such acted in the distribution of his shares, share warrants or moneys, Mr. Osler must disclose that name.

242 (6) That the names of those associated with Mr. Osler's client were not made known or communicated to Mr. Osler as professional legal adviser of his client, but as President of the Trading Company, in order that the persons named might receive shares, share warrants and as such a portion of the company's assets.

(7) That communications made to Mr. Osler or the other officers of the Trading Company to enable the Corporation to act or to enable them to act as agents of the Corporation are not privileged.

(8) That the identity of the client claiming privilege must in all cases be made known to the Court.

(9) That in a foreign Country advising there a person neither a resident or citizen of Canada in reference to business in no way connected with this Country or its laws, Mr. Osler had neither in this Country nor in the foreign Country the status of a professional legal adviser.

I am of opinion that if the Trading Company was not either the clerk or employee of Mr. Osler or the agent of his employer, its acts and the information communicated to it and its officers for the purpose of carrying on its business and distributing its assets cannot be privileged as being the acts of either Mr. Osler or of his employer or as being information communicated by Mr. Osler to his clerk or agent for the purpose of carrying out the confidential business which he claims he was employed to perform by an unnamed client.

I have carefully persued and considered the affidavits, the oral testimony and the documentary exhibits therein referred to in the light of the arguments of counsel, and am of opinion that agency on the part of the corporate entity known as the Continental Trading Co. Ltd., in making the contracts referred to in the evidence, and in distributing the profits arising therefrom is not made out.

243 The written contracts of purchase and resale drawn by Mr. Osler and executed by the corporation under its corporate seal and by the hand of its president, Mr. H. S. Osler, take the form of contracts between principals and that it was intended and understood that the corporation contracted as principal, and not as agent is, I think, indicated by the following circumstances:

(1) It is not alleged that the Continental Trading Co. Ltd., made any express contract with Osler or with his employer to act as agent in the purchase and resale of the oil or to account to them or either of them for the profits on such sale and resale. In the absence of such express contract, the contract of agency or employment relied on by Mr. Osler and his employer must be one implied from the facts and circumstances surrounding the transaction and the acts and conduct of the parties.

(2) The corporation known as the Continental Trading Co. Ltd., and of which Mr. Osler was a directeor and president, and of which the other witnesses were directors, admittedly dealt with the profits as if they were the property of the corporation and distributed them among its shareholders as such, and by reference to the shares and share warrants of the corporation outstanding.

(3) The corporation did not purport to receive or in fact receive and distribute the profits arising from such purchase and resale as money or property belonging to another.

(4) Humphreys would not accept the corporation as a purchaser in the place and stead of the original purchaser, (presumably Mr. Osler's employer) unless performance of the contract by the corporation was guaranteed.

(5) In the contract of purchase and resale the corporation is described as vendee and vendor, and not as agent.

244 This is a case where actions should, I think, speak louder than arguments as to what was the relationship of this corporation to Mr. Osler and his client. The form of the contracts of purchase and sale and the circumstances surrounding the giving and making of the guarantee and the fact that Mr. Osler and his employer had, through the shareholders nominated by them or either of them, absolute control of the acts of the corporation, and that Mr. Osler and these shareholders permitted and directed the Corporation to distribute the profits arising from the contracts among the shareholders of the company as if the profits were the property and moneys of the Corporation rather than the property and moneys of Mr. Osler, are not facts or circumstances from which it should be implied that the Corporation was a mere clerk, employee or agent, but are facts and circumstances that at least indicate that the Corporation was not and was never intended to be and act as a mere agent.

However, whatever the fact may be I am unable to imply a contract of employment or agency on the part of the Corporation from the facts, acts and circumstances disclosed in the evidence, and as such a contract is, in my opinion, the basis of the claim of privilege in reference to the first class or series of questions, it seems to follow that the appeal in reference to these questions must fail.

No evidence was given as to the circumstances surrounding the issue and allotment of shares or the consideration given to the Company therefor, and the presumption is that such shareholders personally purchased the same on their own account. It is just possible, though I cannot think it probable, that further evidence may make out agency on the part of the Corporation, which, in my opinion, is neither indicated nor established by the evidence now before the Court.

245 That brings me to the series of questions by which it is sought to obtain the name of the person who employed Mr. Osler in New York to act as his agent in performing two contracts for the purchase and resale of oil, and to prepare, revise and settle the proposed contracts.

Mr. Justice Riddell was of opinion that because Mr. Osler knew his employer before they met in New York in reference to the business which it is now sought to investigate, the name could not be taken to have been communicated to Mr. Osler in confidence for the purpose of the business.

Mr. Osler testified that at the opening of the interview which took place in New York, and at which he says he was retained, his employer stipulated that his name should not be made known in connection with the business. With deference I am unable to agree in this opinion of the learned Judge appeals from. It seems to me the essence of the question is not, did Mr. Osler know the name of the client before or when Mr. Osler accepted the retainer, but the identification of Mr. Osler's client with the confidential legal business in reference to which Mr. Osler was retained. Nor am I prepared to say that the result of the authorities is that privilege cannot be claimed without disclosing to the Court the name of the client or person on whose behalf it is claimed. I have read and considered the cases cited by counsel and in my opinion they do not carry the law that far, and it seems to me it should not be so held on principle. The principle is that mankind should be able and free to consult professional legal advisers without fear that their confidential communications to such professional legal advisers shall be disclosed. Let us stop to consider the now too common automobile accident in which someone is killed by a car driven by an unknown person, after which the unknown driver goes to counsel and after communicating the facts for advice, directs the counsel to attend the inquest, watch the proceedings and keep him advised.

246 What would become of the principle enunciated if the counsel attending such inquest may be put in the witness box and questioned as to why and for whom he is attending and watching the proceedings. I am clearly of opinion that counsel so employed could and should refuse to answer such questions. Therefore, if it were clear that Mr. Osler was retained to advise and give counsel in reference to legal business at a place and in circumstances which cloaked him with the status of professional legal adviser to his employer, I would allow the appeal on this branch. But I am not satisfied that Mr. Osler was retained at a place or under

circumstances or for a purpose that gave or entitled him or his client to claim that in reference to the business in hand Mr. Osler had the status of professional legal adviser to his employer until sometime after Mr. Osler's client had disclosed to him the business on which he wished to consult, and his name in connection with such business. It is, I think, clear that at the opening of the interview in New York at which Mr. Osler was retained, and the nature of his client's business was disclosed, Mr. Osler was not asked to advise a Canadian, nor to advise his employer in reference to Canadian business or Canadian laws, also that Mr. Osler was not then or now a member of the New York Bar or practising or entitled to practice his profession in the United States or even residing in New York.

The formation of the Canadian corporation known as the Continental Trading Co. Ltd., was an afterthought of Mr. Osler's suggested for his own rather than his client's protection, and was not thought of until some time after the client had made known to Mr. Osler his name in connection with the confidential business in respect of which he sought Mr. Osler's advice, assistance and co-operation.

The proposition then is that if a resident and citizen of the United States brings a Canadian counsel to the United States or meets him there, and there consults the Canadian
247 counsel in reference to purely United States business, this Court should regard communications made to that counsel in the course of the interview in New York in reference to such foreign business as being made to such Canadian Counsel in his capacity of Barrister, Solicitor in this Court, or as made by his client to a professional legal adviser and as such protected from disclosure not only in proceedings in this Court but in litigation prosecuted by the United States in its own Courts against its own citizens, and for that reason refuse its assistance to the United States Court in efforts directed to making such foreign counsel disclose what was communicated to him in the United States in connection with purely United States business.

In Lawrence vs. Campbell (1859) 4 Drury's Report, 489, Vice-Chancellor Kindersley said:

"the question is new in specie but the cases have settled the principle ..... The general principle is founded upon this that the exigencies of mankind require that in matters of business which may lead to litigation, men should be enabled to communicate freely with their professional adviser and their communication should be held confidential and sacred."

In the Lawrence case the protection of privilege was by an English Court extended to Scotch solicitors and law agents practising their profession in London. But it was there pointed out that the Scotch solicitors had in London the status of legal advisers because they were entitled to appear before the House of Lords and to practise as Parliamentary agents and that they were consulted by a Scotchman. It seems to me that the Lawrence case falls far short of establishing a protection to Mr. Osler in the circumstances surrounding his retainer outlined in the evidence.

Here Mr. Osler was not consulted by a Canadian; in the Lawrence case the Scotch solicitors were consulted by a Scotchman. In this case Mr. Osler had, in the State of New York, no status as a professional legal adviser, while in the Lawrence case the Scotch solicitors had a well recognized status in England.

248 The facts and circumstances of the Lawrence case are so different from the facts and circumstances surrounding the retainer here in question, we are, I think, left to determine this case on principle and the question seems to be: Are the exigencies of mankind such as to require that the man may import from a foreign country a counsel and entrust him with business to be conducted in the country of the client, such business having no connection with the laws of the country which has alone given the counsel legal status? If not it should, I think, be held that in this case Mr. Osler did not have the status of a professional legal adviser at the time his client disclosed his name to him in connection with the business in reference to which Osler was consulted and retained. In the absence of binding authority I am not prepared to hold that the exigencies of mankind require us to hold that Mr. Osler had, in the circumstances disclosed and at the time the name was made known in connection with the business, any such status as is claimed for him, it should not be overlooked that the client is claiming this status for Mr. Osler in a United States Court in reference to acts of Mr. Osler in United States, and in reference to communications made to him in connection with United States business, and that the United States Courts have ruled that the questions should be answered and that the question before us is: Must we refuse to enforce that ruling simply because Mr. Osler is a solicitor of this Court? My opinion is that we should not refuse to enforce the rulings of the United States Courts unless they require us to order something to be done which is

clearly contrary to natural justice, public policy or our laws, none of which are, in my opinion, made out.

I would, for these reasons, dismiss the appeal.

I am also of opinion that the cross-appeal must be dismissed. It seems to me that all we can be asked to do in these proceedings is to aid the United States Court by requiring the witnesses to attend and answer questions which
249 the United States Court has determined should be answered. True we can, on an application for our aid, refuse that aid for reasons which seem good to us—but I am unable to find any ground or reason for saying that we may sit in review and reverse the rulings of the United States Court, and direct the witnesses to answer questions which the United States Court has ruled need not be answered.

I do not think I should leave this case without saying that in disclosing the facts and submitting them to this Court for consideration and direction, before answering the questions in dispute, Mr. Osler only performed what his duty and obligations to his client required him to do, and that the conclusion at which I have arrived should not be interpreted as indicating that I doubt the propriety of Mr. Osler's conduct in the transactions sought to be investigated, or the propriety of his claim of privilege or the propriety of his conduct in prosecuting this appeal. It was not in argument suggested that Mr. Osler had been a party to any wrongdoing, and in my opinion his duty to his client required that he should raise the question of privilege and not abandon it until thoroughly satisfied that it had been rightly determined.

Mulock, C. J. O.)
) I agree.
Smith, J. A.)

Hodgins, J. A.—Appeal from Riddell, J., directing the
250 appellant to answer certain questions on his examination as a witness in this action which is one depending in a Federal Court in the United States.

Broadly speaking only two main contentions were presented. These were that the appellant was not obliged to disclose (1) the name of his client, nor (2) the affairs of the Continental Trading Company so far as to state what persons being its shareholders or others received certain share warrants representing profits.

The facts are sufficiently set forth in the judgment appealed from. Professional privilege is pleaded.

If an Ontario solicitor is consulted in New York by an American citizen with regard to business to be transacted, which, or part of which, is thereafter done here, he may be compelled in the Courts here, under proper procedure, to answer questions as a witness in an action in the United States. This would not be questioned, but it seems to follow that he is entitled to set up the professional privilege, which is a matter of public policy adopted in the interests of justice in this Province, Bullwant vs. Attorney-General (1901) A. C. 196, Lyell vs. Kennedy, 9 A. C. 81, Greenbough vs. Gaskell (1833) 1 Myl. & R. 95. Consequently it must attach to an Ontario Solicitor, and be given effect to in an Ontario Court, whatever his client's nationality and wherever he was consulted. It is because the solicitor is being interrogated here, and because his confidential relation is established to the satisfaction of our Courts, that he can claim from them the protection arising from his professional status.

But there is a matter to be considered before dealing with the points raised.

I have read with care the Bill of Complaint upon which this case has been brought before the United States Court,
251 as well as the affidavit of the eminent counsel conducting it, upon which the appellant's examination, as a witness called for the complainants, was directed. I have also perused attentively the information already given by the appellant in his examination.

It is quite apparent that counsel for the complainant have in the Bill of Complaint and in their affidavit, studiously refrained from any allegation that the $90,000 of U. S. 3½ per cent. bonds which it is said were found to be in Mr. Fall's possession in June, 1922, were paid or given to him as a bribe, or that the alleged fraudulent conspiracy between Fall and Sinclair in regard to the oil leases in question, involved in any way the transfer of these bonds to Fall. The studious absence of any allegation involving such an inference is rather remarkable. And it is even more striking when the information actually given by the appellant, and that evidently previously possessed by the complainant's counsel, is considered. It may be that the Government of the United States is reluctant to charge a former Cabinet Minister with receiving a bribe, but on the present state of the record, and under the conditions disclosed by the appellant, evidence regarding the distribution of the profits of the Continental Trading Company and cognate facts would not be admitted

in any Court, unless counsel undertook to connect it relevantly to the charges in that record. This they have had an opportunity of doing, or offering to do in their original application, and on the motions for, and dealing with, the commission herein, as well as before the learned Judge appealed from. But they have not done so. This objection is taken by the appellant and I think the Court is bound before it deals with the solicitor's privilege, to consider and decide whether, in view of the allegations made, his information has such relation to the subject matter of the proceedings that it should ordinarily be disclosed. If it could not be given
252 in evidence, then privilege is not needed by the witness.

It is suggested that we have nothing to do with the question of relevancy. That may be so as to the Commissioner, who has merely to report the evidence given him. But when this Court is asked to commit one of its own officers, it is surely its duty to decide whether or not the questions are such as he should answer having regard to the matters actually alleged, and not to those which indicate merely an enquiring mind. Our laws of evidence must govern this Court in a proceeding to compel a resident here to give evidence. If he were in Wyoming he would be subject to the direction of the Court there in accordance with its laws. If, however, any indication had been given which would show that the questions referred to were or could be relevant to the issues to be tried, I would not be desirous of throwing any obstacle in the way of the complainant. But I find nothing of that kind in the material before us.

In Parkhurst & Lowton (1818), 2 Swan. 194, at page 204, Lord Chancellor Eldon, dealing with the taking of evidence under a commission, said:

"It is too much to say, that if he declines, he must not have some mode of bringing before the Court the question, whether the judgment of the commissioners or the examiner is such as it will approve; and it is impossible for the Court to know whether the witness is right or wrong in his demurrer, unless he states the reasons of it."

In Bullivant v. Attorney-General (1901) A. C. 196, also a case of evidence on commission, the House of Lords ultimately decided what questions were proper. In the Bullivant case already cited, dealing with disclosure where communications were said to be themselves parts of a criminal or unlawful proceeding, but where no specific charge was asserted, Halsbury, L. C. said, at page 201:

253 "The line which the Courts have hitherto taken, and I hope will preserve, is this—that in order to displace the prima facie right of silence by a witness who has been put in the relation of professional confidence with his client, before that confidence can be broken you must have some definite charge either by way of allegation or affidavit or what not. I do not at present go into the modes by which that can be made out but there must be some definite charge of something which displaces the privilege."

In O'Rourke v. Darbishire (1920) A. C. 581, the head note is fully borne out by the judgments. It reads:

"Professional privilege does not attach to communications made by a solicitor for the purpose of carrying out a fraud but in order to displace the privilege on this ground the mere allegation of fraud on a pleading is not sufficient. A prima facie case of fraud must be made out in fact."

In a letter dated 2nd August, 1924, (appearing in the certified proceedings before the Commissioner here) from counsel for the United States of America to the appellant, the following statement is made:

"As we told you, we simply want to trace the bonds which were delivered to you from the time they left your hands until they reached the party we are investigating."

The appellant in his statement before the Commission, following the production of this letter, characterized the position in the same way as I view it:

"It is not alleged that the matter in my hands is connected in any way with the issues in the action in the foreign court, but it is apparent that [that] the only purpose of the examination now sought to be had must be to obtain information for use as a starting point for further investigation which may lead to the discovery of the existence of evidence relative to the issues in said action."

To anyone who has not read the examination of the appellant, it would be a surprise to learn what an amount of information has already been given by him.

It would be interesting to quote extracts from it but it is not necessary. Apart from the name of the client and of those who shared in the profits of the Canadian Co., everything that was needed to explain the course of the transac-

tions under enquiry was given. As the profits, in
254 bonds, were claimable by the holders of share warrants, transferrable by delivery, it is not to be wondered at that the appellant has said that he certainly did not know at the time of the distribution of bonds in the early part of 1922 who were the owners of these share warrants, his own share in the profits being only 2%.

Those who took part in the earlier transactions in the United States were all named by counsel for the complainant in the questions put by them, so that if they do not know the name of the client they must have a very shrewd suspicion of his identity.

And those counsel know, independently, that the actual bonds making up the $300000.00 formed part of the distributed profits of the Continental Co. This appears from their own affidavit in paragraph (q).

"(q) That on April 13th, 1922, three brokerage firms in New York sold and delivered to the Dominion Bank $250,000 par value of said bonds; that on April 17th one of said firms sold and delivered to said Bank $50,000 par value of said bonds. We have ascertained the serial numbers of all of said bonds. Said Bank while showing said transactions on its books, has no record of said numbers. Said Bank, however, has records showing the delivery by it of said same $300,000. of bonds on May 8th, 1922, to said H. S. Osler as President of Continental; that said bonds so delivered were taken by said H. S. Osler, in order to divide amongst the stockholders of Continental as dividends; that he did so divide them, and that they were delivered against stock warrant coupons; that this was done after May 8th, 1922; that on or about June 15th, 1922, $90,000. of said $300,000 bonds identified by their numbers, were in the possession of the said Albert B. Fall, the person who it is alleged in this case conspired with said Sinclair to defraud the United States in the matter of said lease, which said lease was executed in the month of April, 1922. That now produced and shown to us marked Exhibit "E" to this affidavit is a photostatic copy of the ledger account of said Continental with said Dominion Bank, New York Agency, a like copy of the bond account of Continental with the same agency, a like copy of the personal bond account of said H. S. Osler with said Agency, and a like copy of a letter of said H. S. Osler to said Agency ordering the purchase of said $300,000 of bonds."

255 The above information is sworn to by Counsel for the complainant as being obtained from M. P. Bolan of New York, an investigator employed by them to investigate the matters referred to above and from a personal inspection by counsel of the books and records of the Dominion Bank, N. Y.

The Continental Trading Company's profits, except the share of the appellant and perhaps some others in his office, belonged either to the companies known as the Prairie Oil & Gas Co. and the Sinclair Crude Oil Purchasing Co. who had agreed to purchase from Humphreys, and whose place the Continental Trading Co. took at the instance of the client of the appellant, or belonged to that client personally. .

It would appear to me that the appellant has given more information than I think he was bound to do and that further enquiry might well be made in the United States. The appellant has further testified that he has no knowledge as to the holders or distributees of the share warrants of the Continental Trading Co.

But I base my judgment upon the fact that no allegation is put forward sufficient to require this Court to compel further discovery by the appellant.

As, however, the other questions have been very strenously argued I have no objection to state my opinion thereon, subject to the conclusion I have arrived at.

As to the name of the client, I am quite unable to see that a solicitor and his client can make that confidential which is not so in fact. The appellant admits that his client was known to him before he was consulted by him. That client's name, therefore, was a fact of which he acquired knowledge before professional relations begun and not as part thereof. The solicitor and client cannot make a convention by which what is already known to the solicitor will form part of the confidential matters between them, if in fact that is not so.

256 To permit this would extend privilege far beyond what has hitherto been recognized in our courts. Bursill v. Tanner, 16 C. B. D. 1.

As to the affairs of the company, I have already shown that its purpose and object, its transactions and its profits are known and have been disclosed, except the names of its shareholders and the facts connected with the distribution of its profits. The appellant has already sworn that he can throw no light upon the latter subject.

It is clear, however, on the evidence that the Continental Trading Co. was organized to buy and sell oil or to act as an intermediary representing the client in his dealings with the vendor, or the two foreign companies who were the real purchasers. The Company did so act and made a contract with the vendor to buy and then with the purchasers to sell to them, and the performance of the contract with the vendor was guaranteed by the two companies.

Its business, though suggested by the client, was accomplished by it as a corporation under the laws of Canada, and I can see no foundation for the idea that the client can set up privilege with regard to its affairs as existing because he, in concert with his solicitor, projected it.

Necessarily a solicitor has to employ clerks and others in the conduct of his office business and they come under the same cloak of privilege as he does. But when a Joint Stock Company is formed the fact that it is controlled by the solicitor and used by him to do certain of his client's business does not take away the quality and effect given to a corporation by statute and common law.

It must be composed of shareholders, who elect Directors to act as its agents and they have certain rights, powers, and duties as shareholders. The assets of the Company belong to them and must be managed for their benefit. They can, if they all consent, give away or sell its assets just as the Directors can, if properly authorized. But these are
257 the shareholders' property and they are in no sense agents for the client, though the company itself may so act.

There is in consequence a break in the claim of privilege, as the company's actions must be such as the shareholders direct in their own right and if they decide that the company shall become the mandatory of the client they do so of their own volition and not at his. They are not his agents and their actions cannot be controlled by him as his solicitors may and must be.

There is another difference between them and the client's solicitor. Once it steps outside and agrees that as a company it shall enter into contracts for the client's benefit, the company when it does so assumes relations with those with whom it contracts, and to those relations and the resulting agreements there is no privilege attached which the client can assert. The Company is not a solicitor nor are its officers

the agents, clerks, or servants of the solicitor, but it is a corporation engaged in another business, namely that of contracting with outsiders. They deal with it not as an agent of the solicitor but of his client. Hence privilege ceases to operate for his benefit.

In view, however, of the opinion I have expressed as to the effect of the absence of proper allegations, I would allow the appeal and set aside the order appealed from with costs here and below. I may perhaps add that I think the complainant and its counsel have had all the discovery they are entitled to on the present record, and indeed more perhaps than was their legal right.

If, however, in the course of the case in the Federal Court, the complainant amends by making some definite charge sufficient in law to render the questions relevant, I would reserve to it the right to apply again for such an order as it may then be entitled to.

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258 (Notice.)

July 1, 1925.

G. T. Stanford, Esq.,
George P. Hoover, Esq.,
Attorneys for Defendants.

Please take notice that plaintiff will present a petition in substantially the form annexed to the above Court in Cheyenne, Wyoming, on Monday, July 6th, 1925, at two o'clock p. m., or as soon thereafter as counsel can be heard.

ATLEE POMERENE
OWEN J. ROBERTS
Special Counsel for Plaintiff.

We acknowledge receipt of the above notice and copy of petition on behalf of all defendants.

GEO. P. HOOVER

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Attorneys for defendant
Mammoth Oil Company.

Endorsed: Filed in the District Court on July 6, 1925.

259 (Opinion of District Judge on overruling of Petition of Plaintiff to Reopen case.)

Be it remembered that on the 6th day of July, A. D. 1925, the Court, orally, in denying plaintiff's motion to reopen said case, said as follows:

"The Court: The Court is not inclined to take this matter under advisement—I hoped I was through rendering opinions in this one particular case.

I am of the opinion that under the authorities, from a strictly legal standpoint, no diligence has been shown here, which the courts seem to require, in regard to a rehearing of this nature, or review, but I am more impressed with the idea that no new things have been presented to this Court in the matter of attempting to get this evidence, than was presented at the time application for continuance was made, which the Court did not consider at that time. The only situation which is presented to the Court now, which is different from that which was presented at that time, is that you now make a showing that the witness is back in the Canadian country. Every other situation is the same, except, of course, that the Courts have rendered a decision, as has been stated here, which requires the witness to answer some questions. Now, then, as I read the testimony of the witness Osler, I think that it amounts to this: As I stated, I think it is very unsatisfactory, yet I believe it amounts to this, as I analyze it, that he did not know Sinclair, or had no recollection, rather, of seeing Sinclair when he was in New York for the purpose of signing up these contracts, and, second, that he had no recollection of who the warrant holders were of the Continental Trading Company. Now, if he had no recollection then is the Court to assume that because he is going to be called again he has suddenly discovered a recollec-
260 tion in some mysterious way? The way I view it, the evidence upon the point which counsel seeks to now take by a re-opening of the case, has already been made a part of the record, and, assuming that the witness would now go on the stand and testify as counsel intimate that they believe he might, I do not know what the Court would be inclined to think of such evidence after he has told one story, and he would now tell another which might be favorable to the prosecution. I am inclined to think, therefore, that the showing is not sufficient, either upon a strictly legal basis, or as to the showing as to anything which we might hope to obtain in the way of testimony from the witness Osler, be-

cause, as I stated, he has already testified in a way which I assume is sufficient to show to this Court at [lease], that he either knows and does not want to tell, or won't tell, or that he absolutely has no recollection of the thing about which you desire to inquire. I stand upon the decision which I made in connection with the last application for a continuance, with the additional ground that no sufficient showing has been made as to diligence in this case, under the authorities, for the production of the testimony until after the decision of the Court was rendered, although some months have elapsed from that time.

Mr. Pomerene: If the Court please, we would like an exception."

261 Endorsed: Filed in the District Court on Sep. 25, 1925.

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262 Order Denying Motion to Reopen Cause.

Come now the parties to said cause, plaintiff and defendant, by their respective attorneys, and the plaintiff now presents its motion to reopen the said cause and for a commission to take testimony at Toronto, Canada.

And the Court having heard and considered the said motion and the arguments of counsel thereon and being now sufficiently advised does deny the said motion; to which ruling of the Court the plaintiff now at the time excepts.

Dated this 6th day of July, A. D. 1925.

T. BLAKE KENNEDY
Judge

Endorsements: No. 1431 Civil. U. S. of America v. Mammoth Oil Co. Order Denying Motion to Reopen Case. Filed July 6, 1925, Charles J. Ohnhaus, Clerk.

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855 (Opinion of District Court on Merits.)

Atlee Pomerene and Owen J. Roberts, Special Counsel, and Albert D. Walton, U. S. Attorney, for Plaintiff.

John W. Lacey, Martin W. Littleton, George P. Hoover, G. T. Stanford, Herbert V. Lacey, R. W. Ragland, J. W. Zevely, and Cravath, Henderson & De Gersdorf, for Defendant, Mammoth Oil Company, and Edward H. Chandler for

defendants, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company.

Decided June 19, 1925.

856 Judge's Memorandum.

Kennedy, Judge.

This is a suit in equity in which the United States seeks to cancel and annul a lease upon certain oil lands commonly known as Teapot Dome, located in the County of Natrona, State of Wyoming, purporting to have been made on behalf of the plaintiff by the Secretaries of the Navy and Interior departments with the principal defendant the Mammoth Oil Company, upon the ground, first, that said lease was executed as the result of a conspiracy to defraud the plaintiff, between one Albert B. Fall, the then Secretary of the Interior, and one Harry F. Sinclair, who negotiated the lease on behalf of said Mammoth Oil Company, and second, that said lease was executed without authority of law.

The Pleadings.

The bill of complaint sets forth the corporate capacity of the defendants, the description of the property involved, of which plaintiff is the owner, the official capacities of Secretaries Fall and Denby, the Act of June 4, 1920, under which the lease is purported to have been made, and the Executive order of May 31, 1921. It is alleged that the Executive order was invalid and illegal and that it was obtained under representations and persuasions of Secretary Fall as Secretary of the Interior, upon which the President acted, and that said representations were false and made for the purpose of placing Fall in a position to transact government business in connection with oil lands with Harry F. Sinclair, the promoter, organizer, officer and large stockholder of the defendant corporation, Mammoth Oil Company. Then is alleged the execution of the lease by Secretaries Fall and Denby in pursuance of and in reliance upon the Executive order, together with an allegation that the lease is null and
857 void and effected without authority in law, a copy of the lease being attached to the pleading. The agreement of February 9, 1923, supplemental to the agreement of April 7, 1922, is set forth, coupled with an allegation that that contract is void for the reason that its terms were being carried out without advertisement or competitive bidding. It avers that under the lease the Mammoth Oil Company entered into possession of the lands in controversy, explored

and drilled them for oil and took over the oil so found and will continue to do so unless restrained, and that it has trespassed upon the property of the plaintiff. It is alleged that the defendant has issued certificates as in the agreement provided and that the certificates have been illegally used in the payment of construction work of storage tanks in different parts of the United States. The bill then sets forth that Fall and Sinclair conspired and confederated to defraud the United States by the execution of the lease and that in pursuance of said conspiracy they did certain unauthorized and unlawful things, among them being: The preliminary negotiations of Fall purporting to act under the Executive order; the negotiation and conclusion of the agreement between the Government and the Mammoth Oil Company; the awarding of the lease and the subsequent construction work under the agreement of February 9, 1923, without advertising and competitive bidding; that Edwin Denby, the Secretary of the Navy, took no part in the negotiations of the contract of April 7, 1922, exercised no discretion in regard thereto and affixed his signature thereto as a colorable attempt in the exercise of his discretion; that other persons and corporations were desirous of obtaining a lease but were denied an opportunity and discouraged from bidding, of which fact the Mammoth Oil Company was cognizant and in which Sinclair conspired with Fall to that end; that Fall refused to take the opinion of the Solicitor of the Department of the Interior or the Attorney General of the United States in re-
858 gard to the legality of the lease; that Fall communicated to Sinclair, acting for the defendant Mammoth Oil Company, that he would not make a lease upon the land unless Sinclair should present a quit claim deed for mining claims asserted to a portion of the land in controversy, which claims Fall then knew were worthless; that Sinclair secured and lodged with Fall as Secretary of the Interior a quit claim deed from said claimants, some of which were held by a company which was a competitor of Sinclair desiring to become a bidder for the lease; that Fall, with intent to stifle competition and acting with the knowledge of Sinclair, made the obtaining of quit claim deeds a condition precedent to receiving any offer for said lands or to granting a lease upon said lands; that Fall agreed with one Shaffer to see that Sinclair set apart a portion of the lands in controversy for the benefit of Shaffer in accordance with a prior agreement with Sinclair, and as a condition precedent to receiving a lease upon the premises; that Fall fraudulently caused information concerning the agreement before and after it was

made to be kept secret and concealed from his associates, from Congress and from the public; that in negotiating and concluding the agreement Fall and Sinclair, acting for and in behalf of the Mammoth Oil Company, did fraudulently conspire and confederate and in furtherance thereof did defraud the United States by granting the lease in violation of law to favor and prefer the Mammoth Company over other persons desirous of taking a lease, and give to the Mammoth Company the right to receive and take to exhaustion all oil and gas in the lands and to lease the lands at an inadequate, improper and fraudulent consideration; that the lease of April 7, 1922, and the agreement of February 9, 1923, are fraudulent and illegal and of no force and validity against the plaintiff; that the agreement of April 7th constitutes a lien, incumbrance and cloud upon the title of the plaintiff which plaintiff is entitled to have removed; that the defendant company should make discovery in the nature of an accounting as to its transactions under said lease; that
859 the defendant Sinclair Crude Oil Purchasing Company and the Sinclair Pipe Line Company claim to have some interest in said lands, but that in fact they are trespassers upon them; that the plaintiff is without an adequate remedy at law and that the resort to a remedy in equity will prevent a multiplicity of suits.

The prayer of the petition is for a restraining order, the appointment of receivers, a final injunction against the defendants, a decree nullifying the agreements of April 7th and February 9th, a decree for an accounting, a decree ousting the Sinclair Crude Oil Purchasing Company and the Sinclair Pipe Line Company from the lands and other equitable relief.

The answers of defendants while long, amount practically to denials of the allegations of conspiracy and fraud and affirmance of the regularity and legality of the lease and agreement and the transactions surrounding them.

The Facts.

A somewhat extended review of the facts presented upon the trial, together with those of which it is urged the court could take judicial notice, will undoubtedly be necessary before beginning a discussion of the legal points contended for by opposing counsel.

While one basis of the relief sought revolves around and is determinative solely upon the surrounding facts, a rather un-

usual situation exists in the case in that there are scarcely any of the facts and circumstances in dispute, each party relying upon its own combination of facts to sustain its conclusions as to what inferences should be drawn therefrom. Thus, the court is confronted with the duty of assuming that substantially all the evidence is true, which in turn will undoubtedly require a careful consideration of all the evidence in order to give both sides of the controversy fair
861 treatment. While some of the facts have been accentuated by counsel for plaintiff and others by counsel for defendants in their briefs, the court will endeavor to present all the facts considered material to a decision of the issues, whether mentioned by counsel or not, as near as may be, in their chronological order, in order to gather a full perspective of the entire situation.

For a considerable period of time prior to the year 1909, the lands of the United States chiefly valuable for petroleum deposits were open to entry under what is commonly known as the Placer Mining Act, which permitted the location of mineral claims upon the public domain, ripening into a property right upon the discovery of oil which might be extracted to exhaustion without the payment of any royalty to the United States as owner. Union Oil Co. vs. Smith, 249 U. S. 337.

In the year 1909, the Government began what is apparently a new policy in dealing with at least some of its mineral lands, for in that year by presidential orders certain portions of the public domain having been characterized as proven oil lands, were withdrawn from entry. There being some question about the legality of this Executive order, which legality, however, was subsequently sustained by the Supreme Court, Congress passed an act permitting the President by order to withdraw such lands and they were again withdrawn by a second presidential order in the year 1910. These tracts so withdrawn were scattered over different portions of the country and among them was the structure over which this controversy arises. As there is no dispute about the lands, it will not be necessary to set them forth in detail, but suffice it to say that they are located in Townships 38 and 39, Range 78 West of the Sixth Principal Meridian.

These lands under the withdrawal order rested in status quo until April 30, 1915, when by Executive order they
862 were constituted a Naval Petroleum Reserve known as No. 3, to be held for the exclusive use and benefit of the United States Navy. Then followed another interim of

non-development of the petroleum lands of the Government until February 25, 1920, when the so-called Mineral Leasing Act was enacted by Congress, which provided generally for the development of lands chiefly valuable for petroleum and other certain kinds of mineral owned by the Government under the form of leasing said lands. Lands within naval reserves were excluded from the operation of the act, except as to a provision for the leasing of wells within such reserves.

The next governmental step was in the enactment by Congress of the Act of June 4, 1920, relating to the naval petroleum reserves, under which act the lease in controversy is purported to have been made, as set forth in plaintiff's bill, and is as follows:

"That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled 'An Act to provide for the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain,' or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States: And provided further, That the rights of any claimant under said Act of February 25, 1920, are not affected adversely thereby; And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922: Provided further, That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct." (41 Stat. 813).

After the passing of the General Leasing Act, the Interior Department under regulations adopted by authority
862 of the act, proposed to lease lands in the Salt Creek field adjacent to the Teapot Dome upon showing of preferential rights authorized by it. It appears that there was a substantial portion of this oil land area in this vicinity

which was not claimed, testified to by Judge Finney, Assistant Secretary of the Interior, as being 6,400 acres. On March 3, 1921, under direction of the then Secretary of the Interior, John Barton Payne, this unclaimed oil land was directed to be offered for leasing at public auction to the highest bonus bidder, the royalties being fixed by the Department.

On March 5, 1921, Secretaries Denby of the Navy and Fall of the Interior Departments took office.

On March 31, 1921, an Executive order was signed by President Harding, committing the lands in the naval petroleum reserves to the Interior Department for administration, in consultation and cooperation with the Secretary of the Navy. This Executive order appears on page 18 of plaintiff's bill as Exhibit A, in the following language:

"Under the provisions of the act of Congress approved February 25, 1920 (41 Stat. 437), authorizing the Secretary of the Interior to lease producing oil wells within any naval petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder of any part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat. 912), directing the Secretary of the Navy to conserve, develop, use and operate, directly or by contract, lease or otherwise, unappropriated lands in naval reserves, the administration and conservation, of all oil and gas bearing lands in naval petroleum reserves Nos. 1 and 2, California, and naval petroleum reserve No. 3 in Wyoming and naval shale reserves in Colorado and Utah, are hereby committed to the Secretary of the Interior subject to the supervision of the President but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in cooperation with the Secretary or Acting Secretary of the Navy. The Secretary of the Interior is authorized and directed to perform any and all acts necessary for the protection, conservation, and administration of the said reserves subject to the conditions and limitations contained in this order and the existing laws or such laws as may hereafter be enacted by Congress pertaining thereto."

873 The first draft or memorandum of this order appears to have been made by Judge Finney, then First Assistant Secretary of the Interior, and from the testimony offered was the outgrowth of a desire to secure the machinery and experience of the Interior Department in handling

public lands, the administration of which had never before been committed to the Navy Department. Previous to the completion of the document it was submitted to the Navy Department and certain modifications made, after which it was carried to the President by Assistant Secretary of the Navy Roosevelt and the President's signature secured to the same.

Sometime prior to the middle of June, 1921, it was apparently discovered that drainage was taking place in Naval Reserves Nos. 1 and 2 located in California, and there was a granting of strip leases to protect against this, coupled with a settlement of certain adverse claims by the United Midway Company by the granting of leases on certain sections.

On July 8, 1921, during the negotiations over the California leases, Secretary Fall addressed a letter to one Doheny, in which it appears that he had been having some conflict with officials in the Navy Department and stated that he had the matter arranged so that he would have no further conflict with these officials but would consult only the Secretary himself in regard to matters pertaining to the naval reserves.

On July 23, 1921, with respect to what should be done with the oil from offset leases on reserves in California, Secretary Fall asked Secretary Denby for instructions concerning the handling and disposition of the royalty oil resulting, in which letter the suggestion was made that there might be an exchange of the royalty oil for fuel oil or for fuel oil
864 and tanks, the title to both to be vested in the Navy. On July 29th the Secretary of the Navy addressed a letter to the Secretary of the Interior approving the suggestion for the taking care of the oil resulting from the California leases.

Sometime in the early part of September, 1921, Dr. H. Foster Bain, then and at the time his evidence was taken in this case, Director of the Bureau of Mines under the Department of the Interior, in company with Arthur W. Ambrose, holding at the time the position of Chief Petroleum Technologist in the Bureau of Mines, made a trip to the Rocky Mountain region, visited Naval Reserve No. 3, interviewed one Carroll H. Wegemann, formerly in the government service, and one G. A. Fisher, of the firm of Fisher & Lowrey, consulting geologists and engineers, located in the city of Denver. A full discussion of the conditions existing in Naval Reserve No. 3 was had, in which Dr. Bain, Ambrose, Wagemann and Fisher participated. Recent maps were exhibited in which changes in the geological formation in Teapot Dome were in-

dicated, showing faults at a different location than thoseh aving before been represented to the Government by Wegemann while in its employ.

Later in September 1921, the said Wagemann made a report to the Geological Survey that a further examination of the Teapot Dome had convinced him that his previous examination made in 1916 was faulty, in that he was convinced that the saddle was located farther south upon the structure, making a greater area of the structure susceptible to drainage. The substance of this report was communicated to the Paymaster of the Navy and to Commanders Stuart and Shafroth in the Bueau of Engineering of the Navy, that bureau apparently having charge of the naval reserves.

About the 1st of October 1921, Admiral John K. Robison was made Chief of the Bureau of Engineering in the
865 Navy Department by the Secretary of the Navy. On October 8, 1921, by an oral direction of the Secretary of the Navy, Admiral Robison took direct charge of the naval reserves. A short time thereafter the appointment was confirmed by a formal written order.

It seems that some feeling had been developed between Secretary Fall and Commanders Stuart and Shafroth, which the evidence discloses was the opposition in the Navy Department referred to in Fall's former letter to Doheny, but that Admiral Robison under date of October 8, 1921, issued an order from the Bureau of Engineering retaining Commander Stuart in his position on account of his knowledge of the naval reserves. This action was later confirmed by the Secretary under letter of October 24, 1921.

Admiral Robison testifies that the first thing he did after being placed in charge of the Bureau of Engineering, was to get in touch with the officials of the Interior Department, Secretary Fall, Assistant Secretary Finney, Dr. Bain of the Bureau of Mines, and Ambrose, the Chief Petroleum Technologist. He informed Secretary Fall that he had been placed in charge of the naval reserves. He consulted with Dr. Bain of the Bueau of Mines. He consulted with Commander Stuart to familiarize himself with the history of the reserves. His investigation led him to the conclusion that while one of the California reserves was practically non-existent as a reserve on account of checker-boarding, the other reserve was suffering from very serious drainage and that No. 3 reserve was pretty secure but not absolutely so.

Sometime in October 1921, which time is more definitely fixed, there was a conference between Admiral Robison, Secretary Fall, Dr. Bain and Mr. Ambrose, in which among other things the possible drainage of Naval Reserve
866 No. 3 was discussed. At that time the second Wegemann report was before these officers and it was agreed that it at least suggested an investigation of the conditions surrounding the possibility of drainage, and it was determined that a representative of the Bureau of Mines would be dispatched. The conclusion of the Wagemann report contained in paragraph 3, is as follows:

"(3) There is no doubt that from the point of development of the property and recovery of oil from it, it will be much better to develop the property as a unit, before the invasion of water. The Navy Department cannot prevent draining of the property as outlined above. It can make arrangements for the proper development of the property under conditions which will be mutually advantageous to the Navy Department and the operators."

One Heald was an officer consulted in making the investigation of Teapot Dome, he being a geologist of the Bureau of Mines, or the Geological Survey. The examination by Heald was made about the middle of November 1921, and his report was dated on or about the middle of November of the same year. The substance of this report appears to be that there was no immediate danger of substantial damage on account of drainage, because of the fact that there were few wells immediately adjoining the reserve, but that if loss became imminent due to intensive drilling near the line of the reserve, fractions should immediately be leased. The testimony of Heald discloses that he must have made a limited examination of that portion of the reserve where the saddle was supposed to be located, as he was upon the ground according to his own testimony only about four hours and was engaged chiefly in checking the latter report of Wagemann in regard to the location of the saddle.

On or about the 30th day of November 1921, there was held in the Navy Department what is described as the Secretary's Council, consisting of the chiefs of bureaus in the Department, supplemented by others of the more important naval advisors, numbering in all about fourteen. Apparently among those present were the Secretary of the Navy, the
867 Assistant Secretary, the Chief of Operations, the Paymaster, the Chief of the Bureau of Engineering, and the Judge Advocate General.

At this council meeting, the question of carrying out the plans of the Navy was discussed, in which it was virtually agreed that it would be desirable in perfecting those plans to have the use of the oil from the naval reserves, inasmuch as the appropriations of Congress were not sufficient to enable the council to carry out its plans. It was suggested that under the Act of June 4, 1920, oil from these reserves could be secured by exchange directly for the use of the Navy, but doubt was expressed by some members of the council as to the legality of it. The plans above referred to related to the National Defense and have been in existence prior to the advent of Mr. Denby as Secretary of the Navy.

As a result of this conference, it was determined to submit the legal phase of the situation to the Judge Advocate General of the Navy, which was accordingly done by Admiral Robison, bringing in reply a legal opinion, the conclusion of which is in the following language:

"It would be legal to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be designated by the Secretary of the Navy under arrangement whereby the exchanged oil shall be stored in tanks provided by the lessees."

Within a few days thereafter the opinion of the Judge Advocate General was submitted to the Secretary of the Navy who entered his approval thereon and, according to the testimony, opposite the paragraph which has been above quoted the Secretary of the Navy made in his own hand writing the following entry: "Do this. E. D., Dec. 5th, 1921."

On December 9, 1921, Assistant Secretary of the Navy Roosevelt, addressed a letter to the Secretary of the Interior, enclosing certain plans and specifications of that Department covering the storage of fuel oil at Pearl Harbor, Hawaiian Islands, to be carried out with oils secured from the California reserves. In that letter the Assistant Secretary of the Navy requested that, in so far as the war
868 plans of the Navy were concerned, the matters contained in the communication "be regarded as confidential as possible." This letter was replied to by Assistant Secretary Finney of the Interior Department.

On December 14, 1921, Secretary Denby addressed a letter to the Secretary of the Interior, advising him of the decision of the Judge Advocate of the Navy Department and expressing the desire that all royalty crude oil should be used in payment of tankage for the Navy and in filling the tankage with

fuel oil for storage. The Secretary of the Interior was also advised as soon as practicable, to make a contract for constructing storage tanks at Pearl Harbor in accordance with plans and specifications formerly forwarded by the Navy Department to the Interior Department. It contains the following clause:

"If practicable, I also desire to use the crude royalty oil received during the months of November and December, 1921, as a credit against the construction and filling of the Pearl Harbor storage."

The letter also contains a clause advising the Interior Department that Rear Admiral J. K. Robison had been designated as the representative of the Secretary of the Navy "to handle all details in connection with naval petroleum reserve questions." Further, it asked for a monthly summary of the operation of the reserves, as to the progress being made on storage tanks.

On December 31, 1921, Harry F. Sinclair and one Zevely, his attorney, were at the home of Secretary Fall, Three Rivers, New Mexico, in a conference which, according to the testimony of Zevely, concerned Osage Indian leases, but that inquiry by Sinclair was made to Fall in regard to leasing Teapot Dome.

Sometime in January 1922, Mr. Safford, Assistant to Secretary Fall, asked Assistant Secretary Finney of the Interior Department to suggest someone who would be able to
869 prepare a report giving the status of the various mining claims at Teapot Dome. Judge Finney suggested Mr. Tallman, a former special agent of the Land Department.

In the early part of January 1922, Mr. Safford spoke to one Eddy, an employe of the Department, about such a report, and thereafter Mr. Eddy secured the services of Mr. Tallman who made a report, underwritten by Mr. Eddy, which shows among other things, that the mineral claims of Teapot Dome did not deserve serious consideration and that there was no imperative need of opening up Teapot Dome.

About January 21, 1922, Dr. Bain and Mr. Ambrose returned from their western trip.

On January 27, 1922, Secretary Fall returned to Washington, after which return and within a comparatively short time, a conference was held attended by Fall, Robison, Bain

and Ambrose. At this conference the matter as to the conditions in the west were discussed, including those surrounding Teapot Dome. Ambrose had met one Tough, who was a Mineral Supervisor of the Bureau of Mines. At this conference Mr. Ambrose stated that wells were going down in the southern part of Salt Creek, indicating that the boundary line between the north and south sections of the Dome would be affected, which would affect the distribution of oil and water in the territory. Admiral Robison testifies that at this conference Secretary Fall suggested that his information from reports of people in the field led him to the conclusion that these reports were confirmatory of the Wegemann report suggesting danger of drainage in the Wyoming reserve, and further, that Dr. Bain and Mr. Ambrose confirmed that statement. Admiral Robison then suggested that in view of the California experience, action should be immediate to save a repetition of grave losses.

Immediately thereafter Admiral Robison testifies that he took the matter up with Secretary Denby, in which he
870 recommended the opening for development of the Wyoming reserve as a whole, the insistence upon the necessity of a pipe line for military reasons, and that only complete development of the reserve as distinguished from a single line of wells would insure complete protection from drainage from the Salt Creek field. He also testified that Secretary Denby thereupon agreed, after having demurred somewhat in the first instance, to a complete development of the reserve. Admiral Robison then communicated the decision of the Secretary of the Navy to Secretary Fall, telling him that the Navy would require the building and filling of fuel oil storage tanks along the Atlantic coast at certain points, of which he gave an approximation as to quantities. He insisted upon a pipe line. He required that they should have the right to exchange crude oil at the wells in Wyoming for quantities of fuel oil in storage. He further testifies that he stated to Secretary Fall that they would undoubtedly have to—

"deal with some big oil company other than a Standard Oil interest, because it did not seem there was anyone else who could do it."

Admiral Robison testifies that his motives in making the recommendation were based upon the consideration of national defense and economic necessities. At a later point he summarizes his reasons for his recommendations into three divisions. First, fear of loss by drainage based upon experi-

ence in California; second, pressing national emergency regarding our state of security; and third, securing of better terms by development of the entire Dome as distinguished from a series of small leases.

Some three or four days thereafter, Admiral Robison met Mr. Sinclair in Secretary Fall's office. Robison testifies that Fall told him that he had sent for Sinclair, stating that—

—"Sinclair was a big oil man and was the kind of man from whom he would like to get a proposal, because he would be able to put it through."

871 At that time Fall told Robison to set forth to Sinclair in as much detail as possible what was needed. At that time Admiral Robison told Sinclair in the presence of Fall:

"That the reserve should be developed as a whole, that a pipe line should be constructed of adequate capacity to care for the production of the field; that the Naval proceeds from royalties should be directed towards the erection and filling of a specified storage facilities along the Atlantic coast; that the exchange be operated without the use of cash; that the oil from the wells should be used in exchange for the accomplishment, for naval account, of the facilities to be created."

Thereafter and on February 3rd, Sinclair submitted a proposal for a lease upon Teapot Dome. This proposal was for a contract, including among other things the following: The right to take out all the oil in the reserve and to pay a reasonable royalty therefor to be agreed upon, graduated according to the size of the wells; a development of the property as rapidly as conditions and circumstances would permit; the construction of steel storage tanks to take care of the production temporarily; the building of a pipe line; the exchange of royalty oil for fuel oil; the building of storage tanks along the coast; and the quieting of outstanding claims on the reserve. It also contained the proposer's reasons of the necessity for opening up the reserve, the economy of leasing to one interest and the advantages to be gained by the construction of storage tanks. On the following day, February 4th, the proposal of Sinclair was submitted to Admiral Robison, who then conferred with Ambrose and Fall in regard to it. During these conferences, the matter of proposals for lease from other companies was discussed.

Then followed, covering a considerable period, negotiations looking to the formulating of plans for a lease with Sinclair.

Admiral Robison testifies that he actively participated in these negotiations being particularly interested in fix-
872 ing the rates of royalties on oil and gas. Computations along this line were made in the Bureau of Mines, because they had available data concerning production from the adjoining wells in the Salt Creek field. Ambrose, the Petroleum Technologist of the Bureau of Mines, was set to work drafting terms upon the technical matters involved in a proposed lease. Others of the Government who apparently had a part in the drafting of the lease, were Secretary Fall, and Eddy of the General Land Office, who participated in that portion relating to rights of way. Suggestions were secured from Dr. Bain of the Bureau of Mines. Stanford and Zevely, attorneys for Sinclair, also worked upon the lease. This work was carried on at Zevely's office and at Fall's office. Others were engaged in the checking of the terms of the lease, among them F. W. Lane and one H. B. Hill. Ambrose had been in the Department about four years and had been during that time engaged in the preparation of leases under both Secretaries Payne and Fall. Ambrose does not remember that he was specifically committed to secrecy by Secretary Fall, but understood that all matters concerning the Navy were generally considered as secret. The drafting and re-drafting of the lease covered a period of from a month to six weeks from February 18, 1922, according to the testimony of Ambrose.

On February 18, 1922, Ambrose filed a report in connection with Teapot Dome, which is somewhat technical, but in which his conclusion as to drainage is set forth, that if oil should be found in the saddle in the second Wall Creek sand that drainage would result to a certain southern point, and "If conditions are favorable the productivity of the sand will be affected even further to the south."

During the time that the lease was in the course of drafting, information in regard to it evidently reached the public or at least some of those who were interested in oil development.

873 One James C. Crawford called on Secretary Fall sometime in February and made inquiry in regard to the leasing of Teapot Dome. Crawford was a practicing lawyer in the District of Columbia, and Fall at that time told him that he had concluded to offer the Teapot Dome for development,—

—"but that he was not going to offer it publicly because he did not want to be embarrassed by a lot of irresponsible oil companies and individuals applying to him for a lease."

Fall further stated that it would be best to offer it to two or three responsible companies who would be willing to develop it and undertake the construction of a pipe line involving fifteen or twenty million dollars. Crawford and his associates then concluded to affiliate with some of the larger companies and talked with the Texas Company.

On February 28, 1922, Sinclair caused the Mammoth Oil Company, the principal defendant in the case, to be incorporated.

During March and the early part of April, a number of persons called upon Secretary Fall with reference to leases on Teapot Dome. One of these was Kistler of the Producers and Refiners. Secretary Fall told Kistler at that time that he was not ready to lease Teapot Dome and would not consider propositions but would give Kistler another chance. At that time Kistler recommended that a first well be drilled on each structure and that the remainder of the land should be cut up into quarter sections and sold to the highest bidders. Kistler did not again hear of the matter until he learned that the lease had been granted to the Mammoth Oil Company.

Sometime in March, one Shaffer called upon Secretary Fall, after hearing that a lease was contemplated to Sinclair, he having theretofore made application for a lease on certain lands in the Teapot Dome. He had formerly inquired
874 about this from Secretary Denby by letter. Shaffer maintained that he had some equitable rights on certain lands in Teapot Dome in connection with lands which he was developing adjacent thereto in the Salt Creek field. Secretary Fall told Shaffer that a lease was being arranged with Sinclair and that he had taken up with Sinclair the matter of having Sinclair give Shaffer two hundred acres in Teapot dome. To this Shaffer demurred on account of the smallness of the acreage, and Fall suggested that he take the matter up with Sinclair direct.

Sometime between the 15th of March and April 1, 1922, Gerald Hughes called upon Secretary Fall with reference to the matter of securing a lease upon Teapot Dome. Previous to that time and in the fall of 1921, Hughes had had correspondence with the Secretary along the same line. At the March conference, Fall told Hughes that he had decided to lease the Dome to Sinclair. The reasons for leasing being that reports of the Bureau of Mines and geologists acting for the Government indicated that drainage was taking place and outlined in a general way the terms of the Sinclair lease.

Upon hearing these terms, Hughes concluded that he would not be interested in that kind of a lease as it would be a much better one than he could consider. Fall told him that the matter was not concluded as he was in touch with other oil companies or operators for the purpose of attempting to get still better terms. He mentioned one of the larger companies with whom he was negotiating, but the witness does not distinctly remember the name. Fall further told him that he did not want to lease to the Standard of Indiana or the Midwest companies, as they already had a monopoly in that field.

Presumably in consequence of the interview between Secretary Fall and Crawford, one Beaty, President of the Texas Company, heard of the proposed leasing of
875 Teapot Dome and by arrangement called upon Secretary Fall. Beaty subsequently made some tentative proposals, although not in detail, and a dispute apparently arose over a provision in the proposal concerning Bunker A oil. Some telegrams were afterward exchanged. Beaty went to North Carolina and asked the Secretary to await his return to New York a week or ten days later before continuing the negotiations further. The scale of royalties proposed by Beaty was discussed, however, by Fall, Robison and Dr. Bain of the Bureau of Mines, their joint conclusion being that upon the basis of their expectations as to production, the Beaty proposed royalty would not yield as much oil to the Government as the Sinclair proposal royalty. In any event the negotiations with Beaty were not pursued further.

In the interview between Fall and Baty, it developed that certain mineral claims upon Teapot Dome were discussed in which it appeared that Sinclair had secured deeds of these claims to the Government and filed them with the Secretary of the Interior, to become effective upon the contingency of his securing the lease. In regard to them Beaty testifies:

"I had heard something about those claims and had the impression that they had not been delivered irrevocably, but that if my company should obtain a lease, it could acquire these claims and I stated that to the Secretary."

These parties also discussed the exchange of Salt Creek royalty oil for fuel oil.

The disputed mining claims located upon Teapot Dome seem to have been held by organizations commonly spoken of as the Pioneer and Belgo companies. These claims or a por-

tion of them had several times been before the Department of the Interior and had been denied, but applications for rehearings of some character were still before the Department.

One of the conditions to go with a lease upon Teapot
876 Dome, was a requirement from the lessee to negotiate a settlement of these claims. This it appears Sinclair did, for a consideration paid and to be paid approximating one million dollars, conditioned as heretofore stated upon his securing the lease.

There is some evidence that Secretary Fall had talked with others about a lease on the Dome, although it does not appear that others than those mentioned have testified to such conversations. Mr. Beaty testifies that it was generally known among oil companies that a lease was under consideration and that in his connection with the transaction he saw no indication of secrecy.

The lease itself was signed on April 7, 1922, in the presence of Mr. Ambrose. The lease was then transmitted to the Navy Department and the matter was retained in that Department and considered by the Secretary of the Navy and Admiral Robison for about a week, being signed by the Secretary of the Navy on April 12th. The rough draft of the lease had been previously considered in detail by Secretary Denvy and Admiral Robison, going over the terms section by section.

The lease itself is an exceedingly long and technical instrument, containing many features not material to the consideration of the issues here involved, but nevertheless requiring at least a summarized analysis of its provisions. The preamble recites the duty of securing and storing fuel oil for naval purposes and the desirability of securing that storage at accessible points; the desire of the Government to avoid the risk of loss of oil in Naval Reserve No. 3 on account of reduction of gas pressure because of operating in adjacent territory; the desire of the Government to create a competitive market for its royalty oil received from the Salt Creek field; and the desire to exchange crude oil for fuel oil for the use of the navy and the securing of adequate storage facilities for such fuel oil.

877 A description of the property, consisting of 9,321 acres, is then set forth. A bond of $270,000 is required of the lessee to insure a compliance with the terms of the lease. A drilling requirement is made to begin within a period of 180 days, specifying the place at which the first well

shall be drilled, and that tests shall be made from time to time. It further provides that when the wells shall reach or exceed a capacity of 20,000 barrels per day, a pipe line shall be constructed by the lessee extending from the field to a connection with a line of the Prairie Pipe Line Company to Chicago, Illinois. Second and third series of wells are required to be drilled under certain conditions. Wells to offset the wells of others on adjoining lands are required. Royalties are provided on gas, casing-head gas, casing-head gasoline and oil to be produced. These royalties range on gas from 12½ to 16⅔ per cent; on casing-head gasoline they are 16⅔ per cent and on oil, depending upon the quality and daily production per well, they range from 12½ per cent to 50 per cent. The contract further provides that the lessee shall sell to the lessee the royalty oil produced at a price to be controlled by the market, which shall be the highest in any one of three specified oil purchasing areas, and that certificates shall be delivered by the lessee to the lessee, which may be, at the option of the latter, used in four different ways: (a) in exchange for the construction by the lessee of steel storage tanks in carrying out the plan of exchanging crude oil for fuel oil; (b) in exchange for fuel oil; (c) in exchange for gasoline, kerosene, lubricating oils and other petroleum products required by the navy; and (d) redeemed in cash. Detail is set forth as to how these exchanges shall be carried out and reference is made to future contracts to specify in more detail the manner of the exchange. It is also provided as to what points at the options of the Government, fuel oil may
878 be delivered. The quality of fuel oil is prescribed. Provision is made for making reports of drilling operations, logs of wells and the like and in regard to payment of taxes and wages of employés of the lessee. Methods for conducting operations and for computing royalties are set up. Rights of way, easements and surface rights are covered, as well as matters concerning the termination of the lease and proceedings in case of default.

Inquiries in regard to the leasing of the three leases to multiply, not only coming from those who were prospective lessees, but from those having a public interest.

On April 12, 1922, Secretary Fall, in answer to a letter of April 6th, wrote to Senator La Follette, in which he reviewed what the Navy and Interior Departments had been doing in regard to naval reserves—that is, as to general plans for the leasing of the reserves.

On April 13, 1922, Secretary Fall left for his ranch at Three Rivers, New Mexico, and before leaving told Judge Finney, Assistant Secretary, that the Wyoming naval reserve lease had been signed and was locked in his desk, to which Mr. Safford, his assistant, had the key, but that he did not care to have the matter get out until the lease for the building of tanks at Pearl Harbor had been consummated, and that the navy desired to keep the location of the tanks in secrecy. This secrecy, according to Admiral Robison, had been requested of the Secretary of the Interior as to the military portion of the contracts. Before leaving Washington, Secretary Fall addressed a letter to Senator La Follette stating that the details as to handling naval oils would not be given out unless permission should be given by the President. On April 18, 1922, a publicity statement was given the press regarding the lease to Sinclair of the Wyoming reserve, as well as the decision to award a contract to the Pan American Petroleum Company upon the California reserves.

879 On April 21, 1922, a letter was addressed by Secretary Denby and Assistant Secretary Finney to the President of the Senate, in response to a resolution for full information in regard to lessee for naval reserves. Some time on or about April 26th, copies of the lease itself were available.

Some time in December, 1922, the Mammoth Oil Company submitted its bid for the purchase of royalty oil from the Government's leases in the Salt Creek field and represented to the Secretary of the Interior that if its bid was accepted, construction of the pipe line called for in the lease would be started immediately, irrespective of the fact that the Teapot Dome structure would not yield a production of 20,000 barrels, as specified by the lease. Shortly thereafter the Mammoth bid being the highest and best, that company was advised that the bid would be accepted provided the bidder would agree at the option of the United States, to exchange a barrel of fuel oil for each barrel of royalty oil so purchased, and a purchase contract was thereafter consummated.

On or about December 20, 1922, the Sinclair Pipe Line Company, the nominee of the Mammoth Company, entered into a contract for the construction of the pipe line mentioned in the lease of April 7, 1922, which pipe line was subsequently constructed at an expense of approximately $21,000,000.00.

On January 26, 1923, Secretary of the Navy Denby addressed a letter to the Secretary of the Interior, giving certain specifications as to the storage of fuel, oil, gasoline

and lubricating oils and requesting the Secretary of the Interior to call upon the Mammoth Oil Company to enter into a supplemental contract, referred to in the contract of April 7, 1922, covering these matters. A supplemental contract was subsequently drawn up, which provided for the construction at cost plus percentage overhead, of storage tanks
880 at specified points, the exchange of oils and the like, which was submitted to and gone over by Secretary Denby and Admiral Robison and subsequently signed and became the contract known as that of February 9, 1923, this contract bearing both the signatures of Secretaries Denby of the Navy and Fall of the Interior, like the former lease agreement.

Under this contract, the construction of storage facilities was to be undertaken at Portsmouth, New Hampshire, Melville, Rhode Island, Governor's Island, Boston Harbor, and Yorkton, Virginia, and construction had proceeded to a point at Portsmouth, that about $1,000,000 had been expended at the time this litigation ensued.

Two collateral transactions are relied upon by the plaintiff in respect of its contention of conspiracy set forth in its bill. In November 1921, one Henry M. Blackmer, at that time President of the Midwest Refining Company, made a contract with one A. E. Humphreys, President of oil companies doing business in the State of Texas, for the purchase of 33,000,000 barrels of oil at the agreed price of one dollar and a half per barrel. Humphreys telegraphed his attorney, Senator Thomas of Denver, to come to New York, advising that he had made a sale of the oil to Blackmer at $1.50 per barrel. There was then a meeting in New York at which there were present Humphreys, Thomas, Blackmer, Sinclair, O'Neil, President of the Prairie Oil and Gas Company, and Stuart, an officer of the Sinclair Crude Oil Purchasing Company, a company apparently jointly owned by the Sinclair interests and the Standard interests.

The terms of a contract was agreed upon for the sale of this oil and Mr. Blackmer requested that the Continental Trading Company, a Canadian corporation, be named in the contract as the purchaser. To this suggestion, Col. Humphreys made some objection upon the ground that he was not familiar with the financial responsibility of this company and was then informed by O'Neil, Stuart and Sinclair that as their companies had made a deal for the purchase
881 of the oil involved, they would guarantee the Humphreys contract. After the contract was prepared and

ready for signature, one H. F. Osler was by Blackmer introduced as the President of the Continental Trading Company, who executed the contract in its behalf.

Two other contracts were at the same time made between Humphreys and the Sinclair and Prairie companies, one covering fifty per cent of the production of Humphrey's companies over and above the 33,000,000 barrels covered by the Continental Trading Company contract at market and the other, a contract between the Continental Trading Company and the Prairie and Sinclair companies, purchasing upon the basis of $1.75 per barrel the oil covered by the contract between Humphreys and the Continental. A guaranty contract by the Sinclair and Prairie companies of the Continental contract was also executed.

As to the presence of Sinclair, Stuart and O'Neil, Senator Thomas testified that he assumed that they were representing the Sinclair Crude Oil Purchasing Company and the Prairie Oil and Gas Company which entered into the contracts for the purchase of oil.

The oil produced under the Humphreys contract and repurchased by the Sinclair Crude and Prairie companies, yielded a profit which Osler as President of the Continental Trading Company invested in government bonds. These bonds on request of Osler of a bank in New York City, were purchased at various brokerage houses.

The Continental Trading Company had been organized under the laws of Canada and, as is permitted by that Government, only shares of stock sufficient to constitute the corporation were issued, but holding warrants without name were issued and distributed to those having property interests in it. The deposition of Osler was taken upon a commission issued out of this court, but which ended by the plaintiff not being able to secure answers in full to questions propounded to the witness, (the witness principally refus-
882 ing to disclose the name of his client for whom he organized the Trading Company, upon the ground that it was a privileged communication between attorney and client.) The matter was taken upon appeal to intermediate and higher courts of Canada and no decision upon the legal questions involved in the witness refusing to answer was secured so as to make any additional testimony available at the trial, although several continuances were granted for that purpose. So far as this court knows, the matter is still pending before the Canadian courts.

The testimony which Osler did volunteer to give, was to the effect that he had no recollection of meeting Sinclair in New York upon the occasion of his visit there to complete the contracts and further, that he had no recollection of having distributed the holding warrants and therefore to the best of his knowledge had no information of the actual persons who were the owners of share warrants issued by the Continental Trading Company. Osler's testimony is of an uncertain character, evidently very carefully guarded and unsatisfactory, so far as giving positive information is concerned.

A portion of the government bonds which were purchased by the Continental Trading Company, according to the trend of testimony admitted over the objection of defendants, and ruling upon which was reserved, later appeared in the hands of one Everhart, a son-in-law and partner of Secretary Fall in the State of Texas, and were partially used by Everhart in retiring some indebtedness of the Company in which he and Fall were jointly interested, and partially deposited to the credit of Fall individually. Everhart was called as a witness by the plaintiff and refused to testify upon the ground that his answer would tend to incriminate him, but his reasons not appearing to the court sufficient, his claim to exemption was denied. He then made an additional statement of reasons sustaining his position, which the court did recognize as sufficient, so that he did not testify.

883 Attempt was made to take depositions of Blackmer and O'Neil, who were then in France and who apparently refused to testify. Stuart was not presented as a witness in the case.

The other collateral transaction relied upon by plaintiff, involves the matter of a transfer of $25,000.00 in government bonds by Sinclair to Fall. These bonds were shipped by express by the employes of Sinclair to the First National Bank of El Paso, Texas, with a letter of transmission stating that they were the property of Fall and asking the bank to receive them for his account. This was in June 1923. Fall also wrote the bank at about the same time, instructing them to credit these bonds to his account, authorizing a charge to be made against it and stating that he was leaving for Europe on business. These bonds were received and used in the manner directed. The transaction is explained, that after the retirement of Fall from the employment of the Government he was sought by Sinclair to go with him to Russia upon business concerning the securing of contem-

plated oil leases in Russia; that Fall indicated that he would go provided he secured the approval of the Administration at Washington but that he would need some money to close up some deals he had on hand before leaving, and that he would follow Sinclair to Russia at a later date. Fall went to Russia, and upon his return gave Zevely, Sinclair's attorney, his note for the $25,000, representing the value of the bonds transferred, which note when the matter was under investigation had not been paid and no considerable portion of the money had been used by Fall before or at least for some time after he returned from Russia.

884 The Legal Questions.

In beginning an analysis of the intricate legal problems involved in this case, the court has been impressed with two unusual situations not ordinarily found in cases of this character. First, although a conspiracy is one of the bases for the annulment of the lease, one alone of the many government officials having taken an active part in its consummation, is charged with corrupt and ulterior motives. We take it from the evidence and the expressed views of plaintiff's counsel, that although Denby, Roosevelt, Robison, Finney, Bain, Ambrose and Eddy had more or less of an intimate knowledge of the entire transaction and some of them at least an active and persuasive influence in bringing it about, they must be considered as absolved from any incriminating fault as to fraudulent motive. Counsel for the Government in argument being asked as to the basis of Admiral Robison's assertive attitude, charge it to super-enthusiasm and zeal for the welfare of that defense arm of the Government which he represented. Second, there is the significant lack of material damage to the Government which usually attends allegations of fraud, for in the case at bar no attempt has been made to show that the lease [is] controversy was in itself a bad lease for the government, except perhaps theoretically by counsel, but on the other hand the testimony of the plaintiff's own witnesses who are competent to speak upon the subject, tends to show that it is a lease much more favorable to the Government than they as oil operators would be willing to assume. These elements are perhaps not controlling in a case of this character, but they are at least worthy of mention as being conspicuous because their presence is usually the basis of relief sought in cases of this kind. There are so many legal questions presented and discussed that it is difficult to select a logical order for

their presentation. However, the following order may
885 be as convenient as any other.

(a). The Attack upon the Bill.

(b). The Executive Order.

(c). The Charge of Fraud.

(d). The Legality of the Lease.

(e). The Policy of the Government.

(f). The Motion to Strike.

(a) The Attack upon the Bill.

Counsel for defendants have in a measure challenged the bill as to the allegations of the conspiracy to the effect that, in the absence of any showing of fraud in the proofs as to the Mammoth Oil Company being a party to the conspiracy, the proofs of it among those specifically charged, will not necessarily sustain the action, the legal basis of such an action being in reality, a tort committed from which damages will logically flow. The idea is expressed in the case of James v. Evans, 149 Fed. 136, at page 140, in the following language:

"This is in substance an action on the case of the nature of conspiracy. Being a civil remedy, the gist of the action is not the conspiracy charged, but the tort working damage to the plaintiff."

In answering this contention, counsel for plaintiff rely upon Equity Rule 19 to the effect that the court must disregard errors and defects which do not affect the substantial rights of the parties, and upon a number of Federal cases requiring liberal construction of pleadings, among them being Swift & Co. v. United States, 196 U. S. 375, and United States v. United Shoe Machinery Co., 234 Fed. 127.

While the allegations of conspiracy do seem to be emphasized more particularly in the bill than do the averments of specific fraudulent acts, yet this court is inclined to the view that such latter acts are sufficiently alleged to fully apprise
the defendants of the charges to be met, so as to en-
886 title the plaintiff to a decision upon the merits. We are further of the opinion that the evidence in the case discloses that the defendant Mammoth Oil Company was the creature of Sinclair to such an extent that it must be held responsible and liable for all his acts in and about the transactions involved.

(b) The Executive Order.

While the invalidity of the Executive order of May 31, 1921, is alleged in the bill as being void in law and brought about by Secretary Fall for the purpose of enabling him to carry out the plans under the alleged conspiracy, we assume that this matter may as well be disposed of first, because of the fact that it has been very largely eliminated from the case, for the following reasons: First, in the opening argument, counsel for the Government used the following language:

"The Executive order was issued May 31, 1921; we have certain averments in this petition or bill which were in accordance with what information we had at that time. Frankness compels the statement that our evidence, so far as that is concerned, is limited to the fact that the Secretary of the Interior and the Secretary of the Navy prepared this Executive order and presented it, and presumably it must follow that having presented it they presented it that it was for the proper purpose, and that the President of the United States had the authority to execute such an order."

This statement would seem to amount to an abandonment of the claim of any irregularity or fraud surrounding the transaction on account of the Executive order. Second, the evidence clearly shows that the negotiations preceding the execution of the lease were actively, earnestly and completely participated in, if not dominated by the Secretary of the Navy and his designated representative of that Department, Admiral Robison. Denby gave specific instructions in his own hand writing and over his own initials as to what the
887 proposed lease should contain, and Robison outlined and insisted upon the principal provisions of the lease which are here challenged. Admitting that Fall wrote to Doheny that he would have no further conflict with naval officials and that he would conduct all future matters concerning naval leases under direction of the President, and would confer in regard thereto only with the Secretary of the Navy personally, the statement was made in regard to an entirely separate and distinct transaction not involved here, and the fact remains that with respect to the lease in controversy, not a single significant act was performed without the advice and consent of Robison, the designated personal representative of the Secretary of the Navy, who testifies that he consulted continuously with his chief in regard to every proposed move and plan, which evidence is not disputed al

though Secretary Denby was presumably available as a witness, had plaintiff's counsel desired to call him for the purpose of disproving Robison's statement.. The lease was executed by the Secretary of the Navy after full and mature consideration and review of its contents, which must lead to the conclusion that the lease was his legitimate child, brought to life in the exercise of his official discretion. If this suit involved an attempt to fasten the responsibility for the lease upon the Secretary of the Navy, where in the nature of things it logically belongs, the evidence would clearly place it there. Therefore we should not become confused in the consideration of the companion proposition here raised in trying to shift it, through any form of argumentative juggling of legal principles upon this point. Admitting for the sake of argument, that Fall suggested full development of the reserve by lease and the exchange of oil for fuel oil in storage and Denby adopted the suggestion and executed the lease after mature consideration as the evidence shows he did, to hold that it was not Denby's official act, is, it seems to us, little short of branding him as an imbecile. In so far as the al-
288 legation that the lease was made under the authority of the Executive order is concerned, the negotiations and manner of executing the lease shows them to have been such that it was immaterial whether the order had ever been made or not. Nothing appears which would seem to make it unlawful for one department to counsel with and receive advice from another department of the Government and it may be assumed as practical sometimes to use the machinery of other departments in carrying out plans, so long as the executive administration and policies are retained in and directed by the department head, where by congressional authority the discretion is vested. In this respect it seems at least natural that the Navy Department when desiring experienced and responsible operators upon a large scale should have thought of the probable information possessed by the Interior Department in touch with hundreds of operators large and small, through its administration of the General Leasing Act. Third, in their brief, counsel for plaintiff virtually abandon any discussion of the invalidity of the executive order, and refer only to the purported delegation of authority by the Secretary of the Navy to the Secretary of the Interior relating to the power to fix the price of gasoline, determine tests of oil lands, the surrender and termination of the lease and the right to permit assignments or subleases as fixed by the lease, which is an attack upon the validity of the lease itself and not under any power vouchsafed

by the Executive order. In the final argument of counsel for the Government, it is not contended that any finding that these latter elements were in the nature of an attempt to transfer discretion and therefore violative of the law, would render the lease invalid. The language of counsel in reference to the attack upon these above mentioned matters being:

"I must be frank with your Honor—those provisions, in my judgment, would be severable. In other words, if these were the only illegal provisions of the lease, take them down if you find them illegal, and strike them out, and let the rest stand."

889 So that until the Interior Department were seeking to exercise affirmative authority in the manner and upon the things purported to be delegated to it in the lease, no complaint could arise. This eliminates from further consideration the alleged invalidity of the Executive order as a basis for relief.

(c) The Charge of Fraud.

Starting with the assumed proposition that the bill contains allegations of fraudulent acts which in their nature constitute a tort justifying the relief sought, eliminating allegations of irregularity and invalidity in connection with the Executive order which has heretofore been disposed of, and reserving for future consideration the validity of the lease itself under the Act of June 4, 1920, the charges of fraudulent acts may be generally summarized as follows: The secrecy with which Secretary Fall surrounded the entire transaction; the denying of others an opportunity to bid and discouraging them from bidding; the refusal of Fall to seek counsel in regard to the legality of the lease from the Solicitor of the Department of the Interior or the Attorney General; the act of Fall in making the obtaining of quit claim deeds of outstanding claims upon the lands a condition precedent to granting a lease with intent to stifle competition; the alleged agreement between Fall and Sinclair to the setting apart of a portion of the lands to be leased for the benefit of Shaffer and as a condition precedent to granting a lease upon the premises; and the defrauding of the United States by granting a lease to the defendant at an inadequate, improper and fraudulent consideration.

The proofs offered by plaintiff to be considered in support of these charges naturally divide themselves into two classes;

First, the facts relating to and surrounding the agree-
890 ments themselves, and second, the collateral transactions tending to support the charge of fraud.

As to the charge of secrecy, it must be admitted as proven, if not making pubic every official act or not consulting with the departments of government other than those immediately concerned, or Congress, be proof of unusual secrecy in the premises. There is no substantial evidence of the negotiations and transactions leading up to the lease being kept from the leading members of the official families of the Secretary of the Interior and the Secretary of the Navy, at the evidence clearly shows that those divisional heads who would in the nature of things have knowledge of the transactions which were taking place, had such knowledge. As for example, excluding Fall, Denby and Robison, who were personally directing the plans and negotiations, we find the entire board known as the Council of the Secretary of the Navy, consisting of approximately fourteen men, discussing the plan which was eventually adopted. The Judge Advocate General of the Navy was consulted in regard to the matter and rendered a legal opinion thereon. Judge Finney, First Assistant Secretary of the Interior Department, was in a general way familiar with the negotiations preceding the lease, although not in direct charge because, as he testifies, he was working on the California leases when Secretary Fall was working upon the Teapot Dome lease. Dr. Bain, the Chief of the Bureau of Mines, and certainly the head of a department which would in preference to all others be consulted upon the technical features of a plan of this character, was in contsant touch with the situation and fully consulted. Mr. Ambrose, Chief Petroleum Technologist of that bureau, who, if title means anything, would be a man naturally relied upon for advice, was likewise a moving spirit in the transaction. Bain and Ambrose made trips to the Wyoming field and consulted with leading geologists of the west in
regard to conditions in Teapot Dome. Wegemann, a
891 gentleman formerly connected with the bureau but then in private practice as a petroleum geologist and a man of wide experience in western oil fields, was consulted. Safford, Eddy, Tallman and others connected with the Interior Department all knew of the development of plans for the leasing of Teapot Dome. The fact that neither Secretary Fall nor Secretary Denby consulted Congress in regard to their plans for opening up Teapot Dome is not significant, if it may be fairly held that they conceived their right to do the things they purported to do under the Act of June 4, 1920,

for the reason that Congress had already officially spoken upon the subject.

A little strength may be given to the theory of secrecy on account of the national defense. We glean from the evidence that at least some of those connected with the Navy Department, including Roosevelt and Admiral Robison, felt that a reasonable degree of secrecy should be maintained. Whatever part Admiral Robison played in the plan of secrecy, however, cannot be charged to any conspiracy to defraud the Government, as the severest charge against him is that of being over-zealous for the success of the plan proposed and feeling that if it were broadcasted, Congress regardless of the Act of June 4th, might raise some objection. The most suspicious secretive act surrounding the transaction, at least so regarded by counsel for plaintiff, appears to be the act of Secretary Fall in locking the lease in his desk upon leaving Washington on April 13, 1922, with instructions that the information should not be given out in regard to it just at that time, although the key to the desk was left with Safford, the Assistant to the Secretary. Judge Finney, First Assistant Secretary, plaintiff's witness, was advised of this and testifies that Secretary Fall gave as a reason at the time that he did not desire to have it given out until the California leases were signed and they could then be announced together as one achievement. In any event, the lease having been
892 signed no particular advantage could be gained in consummating any conspiracy or fraudulent act by then maintaining secrecy, as the desired end had already been accomplished, whether legal or illegal, and no move was made by the Government to avoid the lease until some two years later. In this view, Fall's reason at least appears to be logical.

As to the matter of secrecy with those making inquiry, the evidence when analyzed virtually amounts to a common business method of Fall talking with those only whom he and Robinson thought would be financially able to carry out a plan such as the Navy Department and his own Department had in mind, which included an opening up of the entire Dome and the building of a pipe line. Kistler's idea was plainly partial leasing and sale of leases in small tracts. It must be admitted that Fall talked with Gerald Hughes of Denver and told him of the general plan of the lease with Sinclair and of the covenants which he expected to exact. Fall did enter into negotiations with Beatty of the Texas Company and proposals by him were considered before the execution

of the Mammoth lease. Robison and Bain concluded the Sinclair royalties were better than those of Beaty. Fall stated to Crawford and others in regard to the leasing of Teapot Dome, that he was not going to offer it publicly for the reason that he was not going to be bothered by a lot of irresponsible companies and individuals applying for a lease. The information concerning the contemplated leasing of Teapot Dome had reached as far west as Denver a considerable time before the lease was granted, which in fact according to the testimony, inspired some of the inquiries which were made in regard to it.

As to the charge that Secretary Fall refused to seek the advice of the Solicitor in his own Department or the Attorney General of the United States, only one suggestion need be made. While the Secretary of the Interior is criticized in the bill for engineering the entire plan for leasing the Wyoming reserve and with negotiating the lease and consummating it independent of the Navy Department and with only the "colorable attempt" on the part of the Secretary of the Navy to exercise his discretion, yet the evidence shows that when legal advice was thought necessary in regard to the legality of a proposed lease then under advisement such advice was sought and received from the head of the legal staff in the Navy Department. Under these circumstances, the criticism could scarcely reach further than an alleged error of judgment in the choice of lawyers.

As to the charge that others were denied an opportunity to bid and discouraged from bidding for the lease, the evidence fairly analyzed tends to disclose that negotiations were conducted with others of a certain class looking to the matter of a lease. As for example, negotiations were actively pursued with the Texas Company, one of the larger companies engaged in oil production. The testimony is that inquiries were also made of some of the other larger companies without bringing any results. It is admitted that no negotiaions were opened with the Standard interests because of the announced policy that those interests dominated the oil industry in the vicinity of the lands here in controversy and that a lease to them would stifle competition in the sale of the Government's Salt Creek royalties. It is fairly inferable that many of the other organizations and individuals making inquiry in regard to a lease were in the class which Fall designated as "irresponsible," that is, in so far as being financially able to handle a project of the magnitude here contemplated. As to the Sinclair interests being "Maggie in another dress," referred to

in the evidence and briefs of counsel for plaintiff, it is fairly safe to assume that all oil operating interests are "Maggies" at times, when their business and economic needs seem to require it. Furthermore, if it be admitted as the court
894 understands it to be in this case, that the lease itself might have been lawfully granted by the Secretary of the Navy without competitive bidding, and it is nowhere required in the Act of June 4th nor is it within the scope of any other law, it is difficult to figure out why there would be a criticism of not seeking competition, unless it be coupled with a showing that the lease actually granted was a poor one so far as the plaintiff is concerned, or would have been improved by the use of advertisement for competitive bids.

As to the charge that the requirement of securing quit claim deeds of former mineral claims upon Teapot Dome as a condition precedent to the granting of a lease, the evidence discloses that these claims in some form were still pending before the Department upon rehearing, although they had previously been denied, but there was at least, according to the testimony, a difference of view among some people as to their legality. Reports had been filed by geologists, which were introduced in evidence, deriving their validity, but they can scarcely be considered as conclusive substantive legal proof, nor was it judicial or departmental adjudication. Furthermore, the general plan of settling at one time all the pending litigation concerning the rights of the Government in and to the lands contained within the structure, shorn of all other circumstances, would seem to be at least a very practicable way of once and for all eliminating these more or less disturbing elements. A similar situation had before developed in the California reserves and compromise was made by the Government with parties who were making claims. Certainly no particular blame could be laid at the door of these claimants if they believed they had valid claims for exhausting every effort to secure the recognition of them.

895 In this category may be placed the Shaffer claim. It is possible that Fall believed that Shaffer had some particular right which should be recognized and for that reason interceded with the prospective lessee in his behalf. In any event, it is not apparent that Shaffer was to any extent an applicant for a lease upon the entire structure but only as to certain acreage adjacent to that which he was developing on the outside, so that he was in no sense a competitor for the kind of a lease contemplated. Presumably of course in meeting the conditions imposed upon the prospective lessee, Sin-

claim would have to pay some consideration to aid the alienation of this impending source of litigation which undoubtedly the defendant desired to avoid without additional expense to the Government.

While there are no specific allegations in the bill concerning the so-called "collateral" transactions, it can be taken that they reasonably come within that charge of the bill, that the United States was defrauded by the granting of a lease for an improper and fraudulent consideration.

The first of these transactions may be designated as the Continental Trading Company transaction. A synopsis of this has been outlined in the previous statement of facts herein. Counsel for the plaintiff would have the court draw the inference that because one of the Sinclair companies other than the Mammoth Oil Company was the purchaser of certain oils thereafter contracted for by Mathews from Humphreys, in which purchase other oil companies were likewise interested, that Sinclair is presumably guilty of fraud because some of the funds which had been purchased by the company which Mathews had nominated as his agency for consummating his contract, were found in the possession of Fall's relative. No connecting link other than the fact that one of the Sinclair companies was with another company the purchasers of this oil together with additional oils from [illegible] Humphreys under an independent contract and the presence of Sinclair in consummating the contracts, is offered upon which to predicate such inference and presumption, which counsel ask the court to draw with the authority of a judicial finding of fact. In the first place, we have been unable to find anything in the evidence and counsel offer nothing in the brief upon which to predicate a finding that Fall and Sinclair were in personal contact before December 31, 1921, at Fall's ranch in New Mexico, although it is possible that the name of Sinclair among others might have been mentioned in the conference between the officials of the Navy and Interior Departments before that time as one of the men who would be financially able to take over and carry out a lease such as was contemplated. The Continental Trading Company deal with Humphreys occurred more than a month later, which strongly tends to negative the supposition of a conspiracy between the two, as well as lacking a substantial element in the establishment of fraud. Again, while the apparent basis of the refusal of Doheny to appear in the Canadian

deposition was, that he would not reveal the name of his client who employed him to organize the Continental Trading Company and which counsel for the plaintiff sought to have his directed by the court to answer, the evidence in this case discloses quite plainly that his client was Blackmer and not Sinclair. The original view of the court when applications for continuances were granted for the purpose of securing the Osler testimony was, that it would disclose that Sinclair was the client under whose direction and employment Osler had organized the Continental Trading Company, and we believe that counsel for plaintiff themselves, originally participated in this belief. However, the testimony of Humphreys and Thomas clearly disclose that Osler and the Continental Trading Company were the creatures of Blackmer, which leaves us in the transaction with no other connection between Sinclair and Fall, except by mere suspicion or guess, and
897 even this at a time considerably in advance of any established contact between them.

Again, in order to reach the conclusion recommended, it must be assumed that the double purchase and sale oil transaction was a "faked-up" transaction, instead of one in the regular course of business and that the officials of the participating companies from the Hubbhreys to the Sinclair Crude Oil and Prairie Oil and Gas were knowingly participating in the "fake", which is equivalent to a charge of assisting in the bribing of a Federal officer and that in the consummation of a transaction in which they are not shown to have had any interest. Upon the evidence here there is an easier way out, which is to assume that the transaction was bona fide.

It is at least quite plausible to assume that the Continental Trading Company transaction was a legitimate one and carried on in the regular course of business. Blackmer who was not associated in any way with the Sinclair companies so far as the evidence shows, negotiated a purchase of oils from Humphreys and a sale of the same oils to third parties who were large oil purchasing companies on the market. On the face of the transaction at least, he acted as a broker. As to why he designated a company instead of himself to become the intervening party, is not disclosed, nor do we know that it is material inasmuch as it is not shown that Sinclair was interested in the company or that any other connection between Fall and Sinclair was disclosed in regard to it. Blackmer may have had people other than either one of these interested with him in his deal and for that reason may have found it necessary and convenient to have organized a com-

pany. Being an officer of the Midwest Refining Company, he may not have desired to testify in regard to the details of the transaction for the reason that it might be thought by his company that he should be held accountable for the profits derived in his brokerage transactions, or he may have
898 been desirous of avoiding income taxes, or his refusal may have been based upon the ground that as there was no connection between his transaction and the Mammoth lease, that it was not the concern of other people in their investigation of an entirely different and disconnected transaction. In the realm of speculation, we may allow our imaginations to roam at will. Stuart and O'Neil did not testify, although it appears that Stuart might have been available.

In applying the rules which must govern the court in a case of this nature, the attention of the court is directed to certain established principles of law. In the case of United States vs. Stinson, 197 U. S. 200, at page 204, the court says:

"While the Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded, and while laches or limitation do not of themselves constitute a distinct defense as against it, yet certain propositions in respect to such an action must have been fully established. First, the respect due to a patent; the presumption that all the preliminary steps required by law have been observed before its issue; the immense importance and necessity of the stability of titles depending upon these official instruments demand that suits to set aside or annul them should be sustained only when the allegations on which this is attempted are clearly stated and fully sustained by proof. Maxwell Land Grant Case, 121 U. S. 325; Colorado Coal Company vs. United States, 123 U. S. 307; United States vs. San Jacinto Tin Company, 125 U. S. 273; United States vs. Des Moines &c. Company, 142 U. S. 510; United States vs. Budd, 144 U. S. 154; United States vs. American Bell Telephone Company, 167 U. S. 224.

"Second. The Government is subjected to the same rules respecting the burden of proof, the quantity and character of evidence, the presumption of law and fact, that attend the prosecution of a like action by an individual. 'It should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful.' Maxwell Land Grant Case, supra, p. 381; United States vs. Iron Silver Mining Co. 128 U. S. 673, 677; United States vs. Des Moines &c. Company, supra, p. 541."

Thus we are confronted with the fundamental principle, first, that a grant of the Government is entitled to due
899 respect and to be clothed with the presumption that the preceding steps required by law have been observed and that this is necessary to insure stability to titles depending upon official instruments; and the second principle is, that the plaintiff in this case because it is the Government, is entitled to no greater consideration that a private litigant.

Another fundamental principle is, that allegations of fraud must be established by clear, unequivocal and convincing proof. This is clearly stated in the case of United States vs. Maxwell Land Grant Case, 121 U. S. 325-381, in the following language:

"We take the general doctrine to be, that when in a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and that is cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition, as thus laid down in the cases cited, is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the government of the United States under its official seal. In this class of cases, the respect due to a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof."

Still another rule is, that where two constructions may be [plac-] upon an Act, that construction which will make it legitimate and honest will be preferred. This principle is enunciated by our own Circuit in the case of Foster vs. M'Alester, 114 Fed. 145, in which at page 152, the following language is used:

"Many innocent and lawful or indifferent acts are linked together, apparently on the assumption that their aggregation would impart to them an odious quality, which separately they did not possess. But the law will not deduce fraud from any number of lawful and innocent acts. One who seeks to

attach a fraudulent character to such acts must go further, and show they were in fact done with a fraudulent intent and for a fraudulent purpose."

900 The books are replete with authorities sustaining these principles, but the pre-eminence of the courts in the cases cited would not seem to justify further citation of authority.

The contention of counsel for the plaintiff, as this court understands it, is, that the court should draw inferences of fraud from Sinclair's failure to testify. This is virtually an admission that there is a missing link in the way of evidence surrounding the Continental transaction, in that there is failue to connect up Fall with Sinclair in the transaction. They rely, however, upon that well known principle of law, that where a litigant has certain substantive facts within his knowledge and refuses to reveal them, that there is raised against him a presumption that those facts if revealed would be against him. This is a well recognized principle of law and is supported by the authorities cited by plaintiff, among others being Bilokumsky v. Tod, 263 U. S. 149, and Missouri, K. & T. Railway v. Elliott, 102 Fed. 96, a case in our own Circuit.

We take it, however, that this rule goes no further than to raise a presumption against the litigant where the facts sought to be inferred are laid at the door of the litigant or placed by the evidence as being clearly within his knowledge, that they have not been revealed by other witnesses and that sufficient proof has been introduced to sustain a prima facie case upon the bill without the indulgence of the inference. This principle is sustained by a number of authorities. Corbin & Co. v. United States, 181 Fed. 296; Diel v. Missouri Pac. Ry. Co., 37 Mo. App. 454; Loper v. Askin, 178 App. Div. (N. Y.) 163; Omar Oil & Gas Co. v. Bair Oil Co., 285 Fed. 588.

The trouble with the application of the principle contended for by counsel for plaintiff in this case is, that no facts, the proof of which we are asked to deduce by inference are
901 laid at the door of Sinclair. The entire transaction in so far as it was participated in by Sinclair was fully revealed by other witnesses and presumably if we are to presume anything on account of the failure of Sinclair to testify, if he elected to so testify, his testimony would have been to the effect that he knew nothing further in regard to the Continental Trading Company transaction than was disclosed

by the other witnesses in the case. A different situation might have been presented had Blackmer been in the place of Sinclair, if we are to consider as admissible the evidence in regard to bonds purchased by the Continental Trading Company and subsequently finding their way into the possession of Fall's relative. For aught we know, there may have been independent business relationships, legitimate or otherwise, between Blackmer and Fall, as neither is made a party to this suit.

As repeatedly stated by the courts, fraud cannot be presumed but must be proved and in the manner which has heretofore been announced throughout our entire history of American Jurisprudence.

It may be admitted that the transaction arouses suspicion, but further than this the court does not feel justified in going toward a finding in favor of plaintiff, in view of the principles of law announced. This court feels that it must be left to some higher court to find from the evidence what seems to be fatal missing links or to extend the principles of law so as to cover a situation as it here apparently exists.

The other collateral transaction is the transfer of $25,000 in bonds from Sinclair to Fall in June 1923, hereinbefore referred to. This may be regarded as a suspicious circumstance, but having taken place long after the transaction which is here challenged and the circumstances being explained, it is quite largely removed from the category of a fraudulent transaction in this suit. It was done openly, without
902 any apparent attempt to conceal it. It was explained fully as to its purpose by those who had knowledge of it, which explanation places upon its face the badge of a legitimate transaction. It is common knowledge that Government officials and employes frequently leave the government service to accept employment and more frequently are employed after leaving the service in lines upon which they have acquired some peculiar knowledge and experience while in the service. The evidence is that this transaction developed out of a request from Sinclair to Fall to go with him as an attorney in investigating and securing oil leases in Russia and that the transfer of bonds was in the nature of a loan for which a note was given to one of Sinclair's attorneys. The money thus realized was to be used by Fall in making settlement for some land purchases before he went upon the trip. The fact that he did not so use it, in itself, is not necessarily a circumstance out of the ordinary and neither is it particu-

larly strange that he has not yet repaid it, considering the culmination of circumstances in connection with the entire Sinclair lease matter. Apparently Fall did not try to conceal his accepting employment from Sinclair, as he announced that he was going to secure the consent of the Administration before accepting the employment. While as before stated such a circumstance affords ground for suspicion, as it reveals a direct personal connection between Sinclair and Fall as distinguished from the Continental Trading Company transaction, yet when the defendant has assumed the burden in this instance placed upon it and explained the circumstances, it falls short of constituting a fraudulent transaction in connection with the issues here raised.

It must follow therefore, that the allegations of fraud contained in the bill have not been sustained.

903 (d). The Legality of the Lease.

Under this head will be considered the attacks made by plaintiff upon the legality of the lease as a valid contract under the Act of June 4, 1920.

The divergent contentions between counsel for the plaintiff and counsel for the defendant when analyzed, are substantially as follows:

Plaintiff contends that the Act of June 4, 1920, is in the nature of a general enabling act permitting the Secretary of the Navy to do certain things in connection with the naval reserves under the then existing provisions of the general laws; while the defendant contends that the Act of June 4th is a full and complete legislative enactment in itself, directed to a specific subject, and in itself furnishing a full and complete guidance, direction and authority to the official to whom it presumes to speak.

It is not in dispute here that Congress had the authority to make laws respecting the manner in which reserves should be used or disposed of.

It would seem pertinent therefore, first, to determine whether or not this act has in itself the fullness attributed to it by counsel for defendant before considering the several objectionable features of the lease in respect to which counsel for the plaintiff contends that the law has been transcended.

Reverting to a consideration of the act, it is found that the Secretary of the Navy is affirmatively directed to take posses-

sion of the Naval Reserves. He is next directed to conserve, develop, use and operate the same. In performing this duty of conserving, developing, using and operating the reserves, he is permitted to do so directly, or by contract, lease or other method. As to the product which may be realized from the reserves, he is permitted to use, store, exchange or sell it for the benefit of the United States. For the pur-
904 pose of carrying out the duty imposed upon him, an appropriation of $500,000 is made available out of certain funds in the Treasury. A proviso is attached that such appropriated sums shall be reimbursed. In between the direction to the Secretary of the Navy as to what he is to do with the reserves and the direction as to the manner in which he is to do it, are found the words, "in his discretion." Some difference of opinion has arisen as to which set of so-called directions this phrase applies; that is, whether it applies to what he is directed to do, or to the manner in which he is to do that which he is directed to do, in connection with the reserves. It is difficult to reconcile its application to the things directed to be done because they are in the conjunctive, the word "and" appearing immediately before the last of them. This would seem to imply that if it were possible, he should do all the things named for him to do without the exercise of any discretion on his part, to wit: "conserve, develop, use and operate." If the word "conserve" be used in its larger meaning and be held to include the saving from loss as distinguished from the more limited meaning of holding the content in the ground, then the Secretary could under a fair construction, conserve, develop, use and operate all at the same time, or at least the doing by him of the four things would merge one into the other.

If the term "in his discretion" be held to apply to the manner of doing the things he is directed to do, it would more naturally apply because the manner is indicated in the disjunctive, consisting of four distinct things, to wit: directly, that is, by doing the things under his general supervision, or by contract or by lease, or otherwise. It will therefore be seen that the term "in his discretion" would logically apply to the direction of Congress as to the manner in which he is directed to carry out the things which he is directed to do. The difficulty with the latter construction is that
905 there is no comma after the word "same" and that if it were intended to apply to the manner of carrying out his direction, the phrase would more properly find place in the context immediately following the word "otherwise."

However, assuming that the term "conserve" is used in the larger sense which has been indicated, and which meaning we think must be given it in connection with the surrounding circumstances applying to the general purposes which must have inspired the act, this application of the discretion to the four things which the Secretary is directed to do, does no violence.

This must be the meaning of the term "conserve" when we consider that the other three terms, "develop, use and operate" are so inter-related that it would be difficult to tell when in doing any one of them he would not at the same time be doing the other. For example, how could he develop the property without using it? How could he operate it without using it? How could he use it without either developing or operating it? If he should operate it, would he not in a sense be developing it and vice versa? And if he did all the three for the purpose of saving the product, would he not be conserving it?

As to the manner in which he is directed to dispose of the product, we find this to be also in the disjunctive and to include four things, to wit: "use", "store," "exchange," "sell." The word "or", before the latter word, here implies discretion, in that it gave him the right to do any of the four things mentioned, or all of them, if his discretion dictated, provided of course that the thing he did was in the nature of carrying out the general purposes of the act. To use the oil and gas product naturally means in this connection, its application to the naval purposes of the United States; to store the product, means placing it in some position for a future use; to exchange the product, means transferring it to another and receiving therefore something to be used in carrying out the general purposes of the act; and to sell the product, means to dispose of it and receive for it a consideration in money. It is difficult to conceive a more sweeping authority given to the Secretary of the Navy than is contained in these four words, unless to them had been added the authority to give away or destroy.

This construction unavoidably leads to the conclusion that the act empowered the Secretary of the Navy to do specific things in and about a certain subject. But counsel for plaintiff argue that this makes a conflict between this law and some of the general laws prescribing the manner in which certain things must be done by the Secretary of the Navy in the way of advertising for bids for fuel for the navy, the

construction of storage tanks at places not designated by Congress, the construction of storage tanks under competitive bidding, and the like. It therefore becomes necessary to ascertain what relationship legislation applying to a particular subject bears to the general laws relating to the same things. Our own Circuit, through Judge Sanborn, in the case of Anchor Oil Co. v. Gray, 257 Fed. 277, has laid down the rule and cited numerous authorities at page 283, in the following language:

"It is a cardinal rule of the construction of statutes that specific legislation in relation to a particular class or subject is not affected by general legislation in regard to many classes of subject, of which that covered by the specific legislation is one, unless it clearly appears that the general legislation is so repugnant to the special legislation that the legislators must be presumed to, have intended thereby to modify or repeal it; but the special and the general legislation must stand together, the former as the law of the particular class or subject, and the latter as the general law upon other subjects or classes within its terms. State v. Stoll, 17 Wall. 425, 436, 21 L. Ed. 650; Washington v. Miller, 235 U. S. 422, 427, 428, 35 Sup. Ct. 119, 59 L. Ed. 295; Harris v. Bell, 250 Fed. 209, 216, 162 C. C. A. 345; Stoneberg v. Morgan, 246 Fed. 98, 101, 158 C. C. A. 324; Sweet v. United States, 228 Fed. 421, 427, 143 C. C. A. 277, 280, 291; Christie Street Commission Co. v. United States, 136 Fed. 326, 333, 69 C. C. A. 464, 471."

A syllabus succinctly stating the view of the Supreme Court in the case of State v. Stoll, 17 Wall. 425, reads as follows:

"If the provisions of a special charter or a special authority derived from the legislature, can reasonably well consist with general legislation whose words are not absolutely harmonious with it, the two are to be deemed to stand together; one as the general law of the land, the other as the law of the particular case."

As this rule of statutory construction seems to be clearly defined, a further citation of authorities would unnecessarily prolong this memorandum.

Upon a construction of what the act itself clearly means, and in view of the rule laid down by the courts, it must accordingly be held that the act in question must stand and be construed as a special act, and the things to be done there-

under are taken out of the general laws relating generally thereto, but that in no sense is it to be construed as repealing those general laws, this law only applying to the subject which it specifically treats, to wit: naval reserves.

One of the contentions of counsel for plaintiff, however, is that the word "exchange" should not in its ordinary and natural construction in the place in which it is found, be held to mean that the Secretary could exchange the royalty oils derived from the land for fuel oil in storage, but that its meaning should be limited to simply the exchange of royalty oils for other oils. We think that an answer to this is, that when the act authorizes the Secretary to store oils it means that he is enabled to devise ways and means for the purposes of such storage; and further, that it is a fair construction to say that he may exchange the oils for anything which
908 in their nature would be carrying out the general purposes of the act. The argument is specious which would attempt to say that if he were empowered to exchange royalty oil for storage or fuel oil in storage for the purpose of the navy, that he could exchange for a battle ship or anything else, as it is clear that this would not be in consonance with the general purposes of the act, to wit: to prevent a loss of the oil and make it available for naval purposes. Again, as to the places of storage, if it devolved upon Congress to designate places of storage in carrying out its direction, then that portion of the act would be a nullity because Congress had designated no places to store oil.

As to the alleged sale of the royalty oils which counsel for plaintiff contend the contract calls for, and therefore that the proceeds must have been in cash and turned into the Treasury, we view the use of the term "sale" as used in the contract of only comparative significance, but rely more upon a fair construction of what the transaction really was as gathered from the context. While the lease says that the royalty oils were to be sold to the lessee, it specifies that certificates representing the purchase price should be delivered by the lessee to the lessor, which certificates might in turn be exchanged for fuel oil in storage to be constructed under a supplemental contract by the lessee, the exchange for fuel oil at places to be designated, the exchange for gasoline, kerosene, lubricating oils and other petroleum products required by the navy, or for cash, these being expressed in the way of options to the lessor. Under this arrangement the certificates have the character of a representative of value ad interim, and the nature of the transaction which it represents

is not really determined until such a time as the lessor exercises the option. If the certificates be used for the liquidation of indebtedness in regard to fuel oil in storage, the transaction is an exchange; likewise with regard to
1919 their use for fuel oil furnished for naval purposes at designated points, as well as for securing kerosene, lubricating oils and the like; but if the certificates are redeemed for cash, it may then be fairly assumed that the transaction takes on the nature and character of a sale, and in this view it may be conceded that the proceeds in cash realized for such a redemption must be covered into the Treasury of the United States, for the reason that the act probably does not go so far as to authorize the expenditure of the cash realized from the sales of the royalty oil.

As to the appropriation made in the act for the purpose of carrying it into effect, it seems to this court that in the light of the analysis of the act itself, considering that it empowers the Secretary of the Navy to directly develop and operate the lease as distinguished from doing those things by contract or lease, that it was the clear intention of Congress to make available a reasonable amount to start that development and operation should he elect to himself assume this burden of its personal direction.

(c) The Policy of the Government.

In argument and brief concerning the so-called policy of the Government in regard to the treatment of the oils in its naval reserves, counsel for plaintiff contend that it was clearly the policy and intent of Congress to have this oil retained in the ground. We cannot follow the argument to this conclusion, for the reason that as it seems to us, there has been no constant policy. It was originally the policy under the Placer Mining Act, to give away the oil contained in government lands to the discoverer. In 1909-10, Congress, realizing the intense monetary value and necessary use for National Defense purposes, withdrew its proven oil
1910 lands from further entry. They remained in this situation, with the exception of some of these lands being constituted into naval reserves, until the Leasing Act was passed in 1920, which again changed the policy in regard to the oil resources of the Government. This latter act was undoubtedly inspired by reason of the fact that numerous private claims interspersing the proven structure so withdrawn, were being developed and Congress realizing that unless some affirmative action was taken, the oil would be entirely extracted through these private operations, and as

a consequence the Government would realize nothing from these resources. So the Leasing Act was passed, reserving to the Government substantial royalties. As plans began to develop for the granting of the leases under the general Leasing Act, it was realized that the production in the structures would be increased and the content correspondingly decreased. Lying adjacent to the great Salt Creek field where the leases were being granted by the hundred, or about to be, Congress realized, judging by the text of the Act of June 4th, that there was danger on account of this intense leasing, of drainage and a loss in the naval reserves themselves, and in consequence passed the act as a remedial measure for the purpose of taking the oil out if found necessary to save it. From this brief history it would be difficult to say that there had been any uniform policy of the Government or Congress in regard to dealing with its petroleum resources, unless it should be considered a general policy to prevent private enterprise from getting away with its oil.

Little weight can be attached to any declaration of policy by Congress a considerable time after the act was passed, especially in view of the fact that reports concerning fraud surrounding the lease reached the ear of Congress, and disturbed the equilibrium of that body, perhaps justly so, because of having no way to legally determine the matter in which it was deeply concerned. That function is vested 911 in the court. Koshkonong v. Burton, 104 U. S. 668-678.

"When counsel, in Ogden v. Blackledge (2 Cranch, 272, 277), announced that, to declare what the law is, or has been, is a judicial power, to declare what the law shall be is legislative, and that one of the fundamental principles of all our governments is that the legislative power shall be separated from the judicial, this court [interrupted] them with the observation that it was unnecessary to argue that point."

(f). The Motion to Strike.

The heretofore considered and disposed of Continental Trading Company transaction was based upon the assumption of course, that the books and records of brokers and banks concerning the handling of bonds purporting to have passed through the Continental Trading Company, had been admitted in evidence. This evidence was objected to by counsel for defendant, received subject to such objection by the court, and at the close of the case it was again attacked by motion to strike. In the view which the court has taken of the entire transaction, considering this evidence as being

admitted in the case, it is of little consequence in reaching a conclusion as to what should be done with the motion to strike. However, for the purpose of making the record, it will be briefly considered. The motion has as its basis two grounds, first, that all of this evidence is inadmissible because falling within the rule that such records are res inter alios acta; and second, that much of this evidence was objectionable for the reason that it was additionally of a hearsay character because the parties who purported to testify to it had no personal knowledge of the books and records themselves. The court considered this question upon the trial and made a tentative ruling, citing some authorities expressing views upon the subject. While the first question [illegible] has not been passed upon in late years in our Circuit, the case of Board of Commissioners v. Keene, 108 Fed. 765, seems to recognize the doctrine contended for by defendants and therefore for the purpose of making the record so that the Appellate Court may pass upon it if it may be so advised, the motion to strike will be sustained upon this first ground. The second point affects a small portion of the evidence.

Conclusion

Not all of the questions have been specifically treated in this memorandum, as the briefs are long and the many individual legal questions have been most ably and exhaustively presented, but enough of them have been considered to enable the court to arrive at a conclusion.

In reaching a conclusion in this case, we fully realize the degree of unpopularity with which it will be received. This is true in the nature of things, because the great general public is confused only with the sensational features surrounding the transactions involved and being largely in the dark as to all the other multitude of circumstances with which the case is surrounded and knowing perhaps less of the general legal principles which the experience of the ages has taught mankind must control in dealing with the rights of persons and property.

The fact that this appears to be a good contract for the Government, as testified to by those witnesses who are qualified to speak of its character, coupled with the fact that the courts should be concerned in enforcing formal grants upon which the rights and welfare of many may depend, impels the conclusion that such contracts should not be set aside for light or frivolous reasons, unless fraud in connection with their execution is clearly shown.

We have no quarrel with the theory that the Congress should have and has the constitutional power to regulate the manner in which the property of the United States shall be handled by the Executive Branch, but we do maintain that in the exercise of that power it may be appropriate legislative authority delegate officers of that Department to handle government property in an unrestricted way and in accordance with a vested discretion. Therefore, it is not only possible but very probable, in this case, that the action taken by the Secretary of the Navy, if the contracts are valid, and honestly carried out, will actually conserve all which could otherwise have been lost and will actually save what, for, as we have but smoking derricks now to see how far oil pools extend underground, is at present little known even to geologists themselves.

I should like to proceed with findings and conclusions consistent with this memorandum, dismissing the bill of complaint and reserving to each of the parties exceptions to those matters which adverse have been adverse.

Endorsed: Filed in the District Court on June 28, 1927.

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267 Findings and Decree.

(Filed in U. S. District Court on June 28, 1927.)

In the District Court of the United States for the District of Wyoming.

United States of America, Plaintiff,
vs. No. 1413. In Equity.

Mammoth Oil Company, a corporation of the State of Utah, Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware, and Sinclair Pipe Line Company, a corporation of the State of Maine, Defendants.

These are the cause coming on to be heard upon the bill of complaint, and this cause having been heretofore heard by this Court on the evidence adduced before it on the merits and the arguments of counsel thereon, and the Court being now sufficiently advised, does publish and file upon the issues joined generally for the defendants and each of them. And the Court finds specially as follows:

I

The Court finds that the question of the validity or invalidity of the Executive Order of May 31, 1923, copy of which is

attached to the Bill of Complaint, marked "Exhibit A", is immaterial and may be largely eliminated from consideration for the following reasons:

(a). The Court finds that counsel for the plaintiff at the trial abandoned the claim of any irregularity or fraud surrounding the transaction on account of the Executive Order.

(b). The Court finds that there was no fraud in pro-
364 curing the Executive Order.

(c). The Court finds that the contracts here involved were not negotiated or executed in pursuance of or in reliance upon said Executive Order, but that on the contrary the negotiations preceding the execution of the contracts were actively, earnestly and completely participated in by the Secretary of the Navy and his designated representative of that Department, Admiral Robinson.

(d). The Court finds that with respect to the lease in controversy, not a single significant act was performed without the advice and consent of Admiral Robison, the designated personal representative of the Secretary of the Navy, and that Admiral Robison consulted continuously with the Secretary of the Navy in regard to every proposed move and plan respecting said lease.

(e). The Court finds that the lease was executed by the Secretary of the Navy after full and mature consideration and review of its contents, in the exercise of his official discretion.

(f). The Court finds that the negotiations and manner of executing the lease show that it was entirely immaterial so far as this case is concerned whether the Executive Order had ever been made or not.

(g). The Court finds that it was not unlawful for the Secretary of the Navy to consult with and receive advice from the Interior Department (which had been experienced in mineral land leasing) so long as the Secretary of the Navy retained in his hands and directed the Executive administration and policies.

(h). And the Court finds that the Secretary of the Navy did so retain in his hands and did so direct such Executive administration and policies.

2.

Respecting the provisions of the lease in controversy,
265 claimed by counsel for plaintiff to be a purported delegation of authority by the Secretary of the Navy to the Secretary of the Interior.

(a). To fix the price of gasoline,

(b). To determine tests of oil lands,

(c). To consent to the surrender or termination of the lease, and

(d). To permit assignments or subleases, counsel for plaintiff, in addressing the Court at the trial, used this language:

"I must be frank with your Honor—those provisions, in my judgment, would be severable. In other words, if these were the only illegal provisions of the lease, take them down if you find them illegal, and strike them out, and let the rest stand."

Not only under the concessions so made, but even had it not been made, the Court finds that the other parts of the contract are not affected by these provisions, and that these provisions can be separated from the rest.

3.

The Court finds that there was no fraud connected with the negotiation or execution of the lease or the supplemental agreement.

4.

The Court finds that Albert B. Fall and Harry F. Sinclair did not conspire to defraud the United States by any lease of the lands in controversy, or by the execution of the supplemental agreement.

5.

The Court finds that the negotiation of said lease agreement was not, nor was its conclusion a private or secret negotiation or agreement between Albert B. Fall and
266 Harry F. Sinclair, and that the negotiation and conclusion of said agreement was not attended by undue or unlawful secrecy.

6.

The Court finds that under the said act of June 4, 1920, the Secretary of the Navy was authorized to award said lease without advertisement or competitive bidding.

7.

The Court finds that under the Act of June 4, 1920, the Secretary of the Navy was authorized to negotiate and execute said supplemental agreement without advertisement or competitive bidding.

8.

The Court finds that the Act of June 4, 1920 is a special Act, directed to the specific subject of Navy Reserves, and in itself furnishing a full and complete guidance, direction and authority to the Secretary of the Navy, and that the things to be done thereunder are taken out of the operation of all general laws.

9

The Court finds that if the certificates delivered by the lessee to the lessor, representing the lessor's royalty oil, be used for the liquidation of indebtedness in regard to fuel oil in storage, including such storage, for fuel oil furnished for naval purposes at designated points, for securing kerosene, lubricating oils, and other petroleum by products, the transaction is an exchange, but if such certificates are redeemed in cash the transaction is a sale, all of which was authorized by the Act of June 4, 1920.

10

And the Court further finds that the disposition of the royalty oil belonging to the United States arising from the operations under said lease "Exhibit B" as such disposition was actually made in this case, was not a sale, but was an exchange of such royalty oil for oil products and for storage tanks in which to store the same. And the Court finds that the said exchange was made within the bounds of a reasonable discretion, and was fully authorized by the said Act of June 4, 1920.

11

The Court finds that no other person or corporation stood ready to obtain or was desirous of obtaining any lease upon the lands in controversy on terms as favorable to the Government as the terms of the lease here in controversy, and that

no such person or corporation was denied an opportunity to bid or discouraged from so doing.

12.

The Court finds that said Albert B. Fall and said Harry F. Sinclair did not conspire or combine, either fraudulently or otherwise, to defraud the United States of America:

(a) By granting said lease in violation of law;

(b) To favor or prefer said defendant, Mammoth Oil Company, over or above any other person desirous of taking a lease upon said lands;

(c) To grant to said defendant, Mammoth Oil Company, any right to reserve any oil or gas from said lands, either to exhaustion or otherwise; or

(d) To lease the said lands to the defendant, Mammoth Oil Company, at an inadequate, improper or fraudulent consideration.

And the Court finds that the United States of America were not defrauded by any of the acts charged in the Bill of Complaint; that the lease in controversy was not granted in violation of law; that the defendant Mammoth Oil Company was not favored or preferred over or above any other person desirous of taking a lease upon said lands, and that the lease in controversy is not upon an inadequate or improper or fraudulent consideration.

13.

The Court finds that neither the said lease "Exhibit
268 B" nor the said supplemental contract "Exhibit C" was in anywise fraudulent, illegal, null, or void, or of no force or validity as against the United States of America, but that on the contrary the said lease and the said supplemental agreement are valid and binding instruments, duly and lawfully executed on behalf of the United States of America.

14.

In the findings and conclusions above given and made the Court has proceeded upon the assumption that the books and records of brokers and banks concerning the handling of bonds purporting to have passed through the Continental Trading Company had been properly admitted in evidence. In the view which the Court has taken of the entire transaction, considering this evidence as being admitted in the

case, it is of little consequence in reaching a conclusion what shall be done with the motion to strike from the record that evidence. This evidence was admitted under objection, and the right was reserved by the defendants to move to strike out the same, and for the purpose of making the record the Court upon consideration does now sustain the motion to strike out the said evidence.

Upon the pleadings, the evidence and the arguments of counsel, it is, by the Court, considered, adjudged, ordered and decreed that the Bill of Complaint herein be and the same is hereby dismissed on the merits.

The Court reserves to the plaintiff its exceptions to each and every the rulings of the Court herein.

Inasmuch as the property in controversy in this cause is in the hands of receivers heretofore appointed by this Court herein, the Court now for reasons deemed by it sufficient, retains upon its docket this cause so far as relates to the said receivership, and does now continue the temporary restraining order and the said receivership until further order of this Court with power in the Court from time to time to make such other and further orders in relation to further continuing said receivership or in relation to operations thereunder or in relation to winding up the same, as it may deem just and proper, provided the plaintiff shall file their petition for appeal within 45 days.

Dated this 19 day of June, A. D., 1925.

T. BLAKE KENNEDY, Judge.

Endorsements: No. 1431—Civil. U. S. of America vs. Mammoth Oil Co. Findings & Decree. Filed June 19, 1925. Charles J. Ohnhaus, Clerk.

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271 Statement of Testimony Under Federal Equity Rule No. 75 (b).

Filed Sept. 25, 1925, Charles J. Ohnhaus, Clerk.

The following is Appellant's condensed statement in narrative form of the testimony introduced upon the trial of the above entitled suit, made in pursuance of Equity Rule No. 75 (b), and lodged in the Clerk's office for examination of defendants as provided by said Rule.

272 Evidence

Plaintiff's Testimony

Testimony of EDWARD C. FINNEY, a witness called on behalf of plaintiff.

Direct Examination.

I am First Assistant Secretary of the Interior, and have been since March 18, 1921. Theretofore for a number of years I was a member of the Board of Appeals in the Office of the Secretary of the Interior; before that Assistant Attorney in his office; before that Chief Law Officer in the Reclamation Service; and before that examiner of mineral claims in the General Land Office. I am a member of the bar in Kansas, District of Columbia and of the Supreme Court.

Mr. Fall took office in March, and I think it was early in April he asked me some questions about the oil reserves and about certain cases that had been pending concerning reserves in California. Subsequently Fall asked me to suggest the name of someone in the Department who could deal with naval oil reserve matters and I recommended Dr. Mendenhall, a geologist in the United States Geological Survey. I know Fall directed Mendenhall to perform that service.

I went West about the middle of June, 1921, returning to Washington about mid July. On my return, Fall told me that the United Midway case in California had been disposed of by the granting of a lease, he also told me that he was not satisfied with the way Mendenhall had conducted his part in the work—he had had some trouble with Mendenhall and a man named Stuart, Commander Stuart—and was dissatisfied with both of them.

When the Department was organized under Secretary Fall, an order was issued with regard to the work in the Department, and who shall have charge of the particular branches of it. There has always been a division of the work in the Interior Department between the head of the Department and the two Assistant Secretaries, and during the Summer of 1921, the Secretary took up the matter of the reapportionment and reallocation of the work and directed that a chart of the organization and an order be prepared. That was done by some of his Assistants, including Mr. Safford, his

administrative Assistant, and the chart was finally
273 completed and accompanied by the order, was presented to me on August 4, 1921, and signed by myself as Acting Secretary, Mr. Fall being away at that time.

Order (Pl. Ex. No. 1) offered.

Department of the Interior

Washington

August 4, 1921.

Order.

Until otherwise directed, the business of the Office of the Secretary is hereby distributed and assigned in accordance with the Organization Chart approved August 3, 1921.

The foregoing shall not extend to changes in personnel at salaries of $1,800 or over, to communications to the President, to the Congress, to a change or reversal of general policy, or to the reversal of a previously settled construction of law or settled practice under which property rights may have been acquired, which will go to the Secretary through the appropriate assistant.

(Sgd.) E. C. FINNEY,
Acting Secretary.

Under the chart matters from the General Land Office come under my immediate supervision. Applications for leasing, both in the reserves and on the public domain, were to come from the General Land Office to the Secretary's office and would naturally be a part of my assignment. Secretary Fall also stated that I was to handle the leases under both the General Leasing Act and in connection with the reserves. He authorized me to sign leases. The general policy was controlled by the order of general policy that I was to sign the leases relieving the Secretary of that detail.

Letter, Fall to Denby (Pl. Ex. No. 2) offered.

Department of the Interior

Washington

July 23, 1921.

Hon. Edwin Denby,
Secretary of the Navy,

Dear Mr. Secretary:

In connection with the recent authorization to the Pan-American Petroleum Company and the United Midway Oil

Company to drill 22 offset wells in naval petroleum reserve No. 1, California, I would like to be advised, as promptly as possible, what arrangements the Navy desires to be
274 made for the handling and dispositon of its royalty oil from said wells, as well as from any other wells in naval reserves, to which the Navy is entitled to royalty in kind.

As the lease provides that purchasers will take care of the oil only for a limited period, it is important that provision be made to dispose of same promptly. I suggest the desirability of effecting an exchange of the crude oil received as royalty for an equivalent value of fuel oil, to be stored without expense to the United States by the other party to the exchange, preferably the exchange should be not only of crude oil for fuel oil in storage but for the tanks containing the Navy's stored oil. In other words, my suggestion is that the crude oil be exchanged for tanks and fuel oil, the title to both to be vested in the Navy as a result of the exchange.

If this plan meets with your approval, and you desire me to undertake to consummate the arrangement, I shall be glad to do so. In any event, I should like to hear from you on the subject as soon as possible.

Sincerely,

ALBERT B. FALL,
Secretary.

Fall did not discuss the policy of this letter with me before sending it to the Navy.

Letter, Denby to Fall (Pl. Ex. 3) offered.

Washington, July 29, 1921.

My Dear Mr. Secretary:

Replying to your letter of the 23rd of July, I am glad to acquiesce in the suggestion made by you.

It will be of great benefit to the Navy to have the royalty crude oil from wells on the naval reserves (both those already in operation and those to be drilled by the Pan American Petroleum Co. and the United Midway Oil Co.) exchanged for fuel oil at tidewater to be stored if practicable without expense to the Government, and if possible for tanks in which

such fuel oil can be stored. As the Navy has no ap-
275 propriation to pay for the cost of construction of tank storage, the acquisition of tanks by exchange for crude oil from Naval Reserve wells will be most acceptable.

While these tanks could be readily utilized at any point at tidewater, the usefulness to the Navy would be increased if they could be located at any one of the following points: San Diego, San Pedro, San Francisco Bay, Puget Sound, Honolulu or Pearl Harbor, Hawaii.

In view of the greatly reduced amount available under the appropriation "Fuel and transportation" for the present fiscal year, it would be of special benefit to the Navy to obtain royalty fuel oil at this time as such oil would not involve a charge against the appropriation.

EDWIN DENBY

Memorandum, Potter to Denby (Pl. Ex. 4) offered.

Navy Department

Bureau of Supplies and Accounts

Washington, D. C.

29 July, 1921.

Memorandum for the Secretary of the Navy.

Subject: Exchange of royalty oil obtained from wells on Naval Reserves.

With reference to the letter of the Secretary of the Interior, dated 23 July, 1921, I strongly recommend that the plan suggested by the Secretary be accepted. It will be of great benefit to the Navy to have the royalty crude oil from wells on the Naval Reserves (both those already in operation and those to be drilled by the Pan American Petroleum Company and the United Midway Oil Company) exchanged for fuel oil at tidewater to be stored if practicable without expense to the Government, and if possible for tanks in which such fuel oil can be stored. As the Navy has no appropriation to pay for the cost of construction of tank storage, the acquisition of tanks by exchange or crude oil from Naval Reserve wells will be most acceptable.

While these tanks could be readily utilized at any point at tidewater, their usefulness to the Navy would be increased if they could be located at any one of the following points:

San Diego
San Pedro
San Francisco Bay
Puget Sound
Honolulu or Pearl Harbor, Hawaii.

In view of the greatly reduced amount available under the Appropriation "Fuel and Transportation" for the present fiscal year, it would be of special benefit to the Navy to obtain royalty fuel oil at this time as such oil would not involve a charge against this appropriation.

276 I recommend that the Secretary of the Interior be requested to undertake to consummate the arrangement, as suggested in his letter.

(s) DAVID POTTER.

Fall mentioned the letter of July 29 (Pl. Ex. 3) to me in a general way when he was leaving for the West, I think about the last of July, and told me that during his stay in the West, while on the Pacific Coast, he was going to discuss the matter with some oil companies or oil men, with the idea of working up some such arrangement. He returned from the West about mid October. I don't recall that he told me anything about it at that time. I was not present at any conference at which questions of policy regarding this were discussed.

Letter October 25, 1921, Denby to Fall, (Pl. Ex. 5) offered

October 25, 1921.

My dear Mr. Secretary:

Rear Admiral J. K. Robison reported to me that as a result of his interview with you on Saturday, October 22, the following general agreement in connection with the naval petroleum reserves was reached:

1. That arrangements will be made by the Interior Department to have naval petroleum reserves Nos. 1 and 2 drilled with offset wells in every case where adjacent property is drilled.

2. That the amount of drilling with consequent exhaustion of the reserves shall be kept as low as practicable without risking the depletion of the reserves by other parties.

3. That the equivalent of all royalty oil shall be delivered to the Navy in the form of fuel oil at such points on the Pa-

cific Coast as may be found necessary for naval use, and that this exchange of crude oil for fuel oil will be effected on as favorable terms as it is possible to obtain. It is presumed that under favorable circumstances and terms arrangements may be made for including points on the Atlantic coast for the delivery of an equivalent supply of fuel oil to the Navy.

4. That the equivalent of so much of the royalty oil as is not used by the Navy is to be devoted to the construction of oil storage at Pearl Harbor, Hawaii, and at other points to be hereafter designated by the Navy Department, the cost of the tanks to be credited to the royalty due the Navy.

277 5. That the Interior Department will exercise its best efforts to obtain for the Navy as large royalties and as favorable terms as practicable by public competition or otherwise.

6. That the terms for conversion of the crude oil at the well to fuel oil at tidewater or in tanks to be provided by the lessor will be submitted to the Navy Department for approval of the qualities, deliveries, engineering, and other features involved.

7. That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only.

8. That every effort will be made by the Interior Department to expedite the solution of this problem so that fuel oil at Pacific tidewater in exchange for royalty crude oil may be delivered as soon as possible to naval vessels and so that the erection of suitable storage facilities for 1,500,000 barrels of fuel oil at Pearl Harbor may be undertaken and expedited.

9. That the development of naval petroleum reserve No. 2 is not to be undertaken except to protect the Government against depletion of the reserve by other parties.

10. The general intent of this agreement is to transform royalty oil into either (a) fuel oil for current naval use, or (b) fuel oil stored where required by the Navy as a reserve, the storage, of course, to be naval property and to accord with naval requirements.

In accordance with the foregoing understanding there is returned herewith letter from the Interior Department concerning leases that it is proposed to enter into with certain

parties in naval petroleum reserve No. 1. Such details are, under the foregoing announced policies, to be left entirely to the Department of the Interior.

Information is requested as to whether the foregoing policies are in all respects agreeable to the Department of the Interior, and also when it may be expected that the Navy Department will begin to receive fuel oil as part of its royalties.

EDWIN DENBY.

I was not present at the conference referred to in that letter. In October I was called to the office to carry Mr. Fall a map of the California Reserves, saw Ambrose and probably Barnthere, but I heard nothing of the conference. Either late November or early December I knew of the letter (Pl. Ex. 5). It became necessary then for me to know of it, for about December 1st Fall went away and I was corresponding with some of the oil men on the Coast during December respecting the disposition of the royalty oil.

278 Letter, Fall to Denby (Pl. Ex. 6) offered.

Washington, October 30, 1921.

My dear Mr. Secretary:

I have your letter of October 25 and have just consulted Admiral Robison about the subject matter.

Responding to your request for information as to whether the policies set forth in the letter are agreeable to the Department of the Interior, I can say without hesitation that they are entirely agreeable and will be carried out to the very best of my ability.

Of course, should any new matter come up at any time I will unhesitatingly and immediately consult you personally or through Admiral Robison.

As to the definite date when you may expect fuel oil as payment of your royalties, I can give you accurate information within a very few days.

Several of your wells are coming in, one or two are in, and we can exchange immediately for fuel oil certificates through which you can draw fuel oil as needed at Pacific ports.

Very sincerely yours,

ALBERT B. FALL.

I was not consulted as to that reply letter. I was not advised of any change in the policy as to leasing set forth in those letters (Pl. Exs. 5 & 6) until the following February. I had no knowledge of the ordering of any investigation by the Geological Survey of Teapot Dome, nor did I hear of it from Secretary Fall as far as I can recall. I learned of the investigation the next Spring.

Fall was away from Washington from December 1, 1921, till January 27, 1922. I must have heard about the leasing of Teapot Dome—or a proposed lease between January 27 and February 3 or 4. In the meantime the matter of naval storage at Pearl Harbor had come up and been under discussion. That had nothing to do with Teapot Dome, but the Secretary told me that Dr. Bain and I were to look after that—the negotiations for the bids and leases or contracts for the storage at Pearl Harbor and that he was going to deal with the Naval Reserve No. 3, the Teapot Dome, as we call it, himself. That was the first intimation I had
279 that there was to be any dealings on Teapot Dome.

The oil storage at Pearl Harbor and the proposed contracts for the use of the oil royalty from the California reserves for the work at Pearl Harbor had no bearing on Reserve No. 3.

I am not clear as to date, but some time after that I next heard of the negotiations about Teapot Dome when Fall told me he had a proposition from Sinclair with respect to the leasing of Teapot Dome and latterly I met Sinclair two or three times in the ante-room of Fall's office and passed the time of day with him. Then, at one time, probably in March, I was in the Secretary's room with other officers, and met Judge Beatty of the Texas Company there, stayed five or ten minutes, and heard some discussion about the possible leasing of Teapot Dome. Judge Beatty was there, I think, with the thought of possibly offering a proposition for its development. And I met Mr. Crawford,—I don't know whom he represented, but he was the attorney representing some oil company—he just mentioned the possibility of leasing, and I told him he would have to see the Secretary. Whether he did I don't know. I saw Gerald Hughes in the ante-room, and talked with him, but he didn't mention the Naval Reserve to me. I recall no one else.

The Secretary never discussed any details of the proposed lease with me. He once told me that Sinclair had submitted, or was about to submit, a proposition, and, I think, once men-

tioned the proposed pipe-line which he said would not only aid the development of the reserve, but in the development of an outlet for some of the oil from Salt Creek, and I was interested in that because I had signed most of the leases in Salt Creek field and was administering the collection of the rentals and royalties.

No draft of the proposed lease of Teapot Dome was submitted to me. Since I have been First Assistant Secretary I have passed on practically all of the leases that have been made—all, I think, except this one and the Doheny Contract covering Reserve No. 1 in California. I think in February, though I can't fix the time distinctly, Ambrose of the Bureau of Mines told me he had been asked to aid in repairing a contract of lease respecting Teapot Dome from the stand-
280 point of an oil man or engineer, and that he would need some assistance in drafting it; I told him I would assign and I did assign Mr. Williamson, an assistant attorney in our office, to assist Ambrose and I presume he did,—I don't know.

I never saw any written report by Ambrose on the subject of possible drainage of Teapot Dome. I think possibly Ambrose or Bain told me a report had been made indicating, in their opinion, some drainage, but I never saw the report.

Charles V. Safford was the Administrative Assistant to Secretary Fall. About January 1, 1922, Safford asked me to suggest someone who would be able to prepare a report or memorandum, giving the status of the various claims in the Teapot Dome, that is the locations of the applications which might be of record. I suggested Mr. Tallman, a former special agent of the Land Office, who had been in Wyoming and knew the field, and who, at the time was employed in the General Land Office at Washington. I had no connection thereafter with the preparation of the Tallman report.

The first inquiry as to possible leasing of Teapot Dome that I recall was prior to March 4, 1921, when Payne was Secretary. Mr. Shaffer called on the Secretary and, I think, wrote asking a lease for a tract in the Teapot Dome and an adjoining tract outside, based on some mining locations in which he was interested. He spent a considerable amount in drilling a dry hole outside the reserve, and he stated the expenditure and work done gave him some equity and that he should have a lease. That application, as respects the reserve, was denied by Payne, and I think I prepared the decision.

From then on to April, 1922, there were a number of inquiries. There were any number of inquiries from people from Wyoming,—oil men who were interested,—asking me if there was any chance to get a lease on part of these lands.

Secretary Fall spoke to me about the placer mining claims of the so-called Pioneer and Belgo companies. There were three or four oil wells drilled on top of the structure by the Pioneer, I think, and they had applied for a lease, basing that on these wells. The application would be under the Act of February 25, 1920, but they based their claim on alleged prior location,—the Belgo titles as we called them.
281 That application had been denied by Secretary Payne on the ground that the wells were not discoveries; and later as First Assistant Secretary I denied a motion for rehearing; and then a further petition for the exercise of the supervisory power of the Secretary was filed and it was in connection with that that Fall spoke to me about the claims. I told him they had no validity and no standing. As to some other paper locations, which there were, I told him they weren't worth the paper they were written on. In the Spring of 1922 the time for filing applications for leases under the General Leasing Act had expired.

There was no public notice by advertising or circulation of the intention to lease Teapot Dome. I do not know of any call for bids or of any bids that were received,—formal bids, I mean. As to the practice prior to that time,—under the General Leasing Law people who had previous rights were not required necessarily to bid, because there could be no competition. All leases disposed of, however, under the other sections of law—like the Naval Lease in California on Reserve No. 1, which was finally awarded to Doheny—were, after advertisement, open for competitive bidding. Twenty two wells were leased by Secretary Fall in the early part of 1921 in the California Naval Reserve by Competitive bidding.

I was not present when Secretary Fall signed the lease in issue. I do not know who was present. I do not know what day he signed it. I first knew of its execution on the 12th or 13th— the 13th I think. The occasion was this; Secretary Fall was leaving Washington for the West, and on the evening of the 13th I came to his room to get my instructions, and Mr. Safford was also in the room, and the Secretary told us the lease had been executed, and the lease—or the proposed lease—and the duplicates were in the drawer of his desk.

and he locked the desk and locked the drawer and gave the key to Safford and told us he didn't want to let this get out until after the contract for the lease for the building of the tanks and so forth at Pearl Harbor, was also made. I think there was something said about the Navy desiring to keep the location of the tanks in secrecy.

282 After Secretary Fall left there were several inquiries received but I gave them no information whatever about any lease having been signed.

Letter, Fall to Denby (Pl. Ex. 7) offered.

The Department of the Interior

Washington

April 12, 1922.

My dear Mr. Secretary:

I am herewith handing you one of the triplicates of the contract between the Mammoth Oil Company upon the one hand and myself and yourself upon the other.

You have signed this contract in duplicate, one copy of which has been delivered to the Mammoth Oil Company, and the other is retained for the files of this office. The third, an exact triplicate, only lacks your signature, and I am handing it to you for your files.

The original retained by this office has attached to it deeds from the "Belgo Oil Company," "Pioneer Oil Company," etc., to the Mammoth Oil Company; quitclaim deeds of the Mammoth Oil Company to the United States for various lands in the Teapot Dome; also authorization of the Mammoth Oil Company for the execution of these deeds and the execution of the contract; also a temporary bond, approved by myself, to be submitted later upon demand, said bond being in the sum of $250,000.

I am also handing you a copy of memoranda which I have made for the government of my staff in giving out any information concerning these contracts.

You will note that this memoranda simply states the general policy; distinguishes between the handling of naval oils and other governmental royalty oils; states the necessity for following the present policy; and states generally what we are doing through the exchange of crude oils for fuel oils.

I am also attaching a memoranda setting forth in very brief outlines, the salient provisions of the Mammoth oil contract, which I am handing you.

I have instructed my office force to give out nothing of the details of any of these contracts and to retain in a secure place the original contract with the deeds, etc. attached. This for the reason that it has been customary to file all contracts with the general files, where by inadvertence they might be subject to examination by parties not entitled to see them. I am particularly anxious that no details should be given out pending the final agreements upon the contracts for the construction of reservoir facilities in Hawaii.

Very Sincerely yours,

ALBERT B. FALL.

Enclosures with above letter (Pl. Ex. 7A and 7B) offered.

The Department of the Interior

283 Washington

April 12, 1922

Brief Memorandum—Mammoth Oil Contract.

This contract is in the form of a lease, with graduated royalties, for the entire area of Naval Reserve No. 3 in Wyoming.

It is based upon the necessity for the preservation of the oils, the property of the Navy, by the extraction of the same from the ground and storing where losses will not be incurred.

The contract provides for the drilling of at least 20 wells within a limited time.

It provides for the immediate construction of a pipe line from the field to a junction with the present constructed pipe lines at or about Carrollton, Missouri, a distance of approximately one thousand miles.

It provides for the exchange of crude for fuel oils, the latter for Naval purposes, at our option, rate of exchange based upon Salt Creek prices or Mid Continent field prices for crude oil.

It provides for the delivery of one barrel of Naval specified bunker A oil at any point as named in the contract from Guantanamo, Cuba, to the northeast corner of the United States, at the rate of one barrel of fuel oil for one barrel of crude.

It provides for a line of credit under which in exchange for the crude oil ample storage for all the product shall be

provided without any cash outlay at any point fixed by your department on the Gulf coast, or Guantanamo, Cuba, and north on all the Atlantic Coast of the United States.

It provides that the lessee shall at such or any other points, at its own expense, and without obligation upon the part of the Navy, provide gasoline, kerosene, lubricating and cylinder oil, etc., at market prices, so that the Government can, if it desires to do so, take such additional products.

It provides that after the first 18 months, the Navy may give notice that it desires cash in lieu of fuel oil for its crude products, based upon competitive prices in the Mid-Continent and Salt Creek field.

It provides prior right of transportation for all Government oils from the Teapot Dome and the Salt Creek field, even prior to the uses of said pipe line for the lessee.

It makes the pipe line when constructed a common carrier for all Governmental oils, whether in interstate or intrastate business.

It, therefore, gives the right to the Navy in the future, if it so desires, to sell its oils, to receive the prices in the field, or to conduct the same through the pipe line by preferential right to any point from the Salt Creek fields to the City of New York.

284 The pipe lines involved represent at the present time an investment of $115,000,000, and the present contract calls for an investment upon the part of the lessee of not less than $26,000,000 in addition. It further necessitates the investment of all the additional sums in cash necessary to provide the storage exchange for fuel oil.

It brings about immediate competition in the Salt Creek field and will add from forty to sixty cents per barrel to the present prices of the Governmental royalty oils, amounting to more than 5,000 barrels per day now produced in that field. This production is based upon 40% extraction, which will immediately be raised to 100%, yielding to the Government for Reclamation, State and Treasury purposes, approximately 12,000 barrels per day, with an added value thereto of fifty cents per barrel; or, in other words, an added price over and above that which we are now receiving of $6,000 per day to the Government and State of Wyoming.

Department of the Interior.

Office of the Secretary.

April 13, 1922.

Memorandum:

Referring to constant requests for information concerning rumors or statements as to the disposition of naval reserve oil lands:

The general policy in these matters has been given publicity. In carrying out this general policy as it is being carried out through the cooperation of the Navy Department and of the Interior Department, it is being handled by the Secretary of the Interior and the Secretary of the Navy but not in a routine manner by either department. The consequence is that the officials of the bureaus of either department are not able to give out any information whatsoever as to the detail of any plans of any kind or character.

I did not collaborate in the preparation of that letter. I did not know about it.

Letter, Fall to Denby (Pl. Ex. 8) offered.

The Secretary of the Interior

Washington, April 12, 1922.

My dear Mr. Secretary:—

We have had some difficulty and delay in the matter of contracts for the construction of storage tanks at Pearl Harbor, for the following reason, to wit: The construction companies have no use for oil and cannot, of course, take our crude oil and exchange fuel oil therefor. The oil com-
286 panies, with whom such exchange must be made, are not engaged in such construction work as appears to be necessary to provide the storage at Pearl Harbor. The consequence has been that we must submit all bids propositions to the oil companies, and they in turn must submit bids based upon Naval specifications, not only for the purchase of tanks, etc., but also for the purpose of doing the necessary construction by way of dredging, wharfage, excavation, cement work, etc., etc. Our proposition, therefore, must necessarily involve a profit on the construction to be made by the oil company in addition to any profits in oil exchange. If we were in a position to effect the oil exchange, upon the one

hand, and having established a credit, to use the cash derived from such credit with which to make our own contracts, we would thus save the profits which will be made by the oil companies.

For the reasons above given I have drawn a proposed amendment to be attached to line 8, page 25, of the Naval Appropriation Bill (or to be attached to any other proper paragraph in said bill), which amendment reads as follows:

Provided further, that storage of fuel oil from Naval oil reserves may be provided either by exchange of oil for such storage or (and) by sale of royalty oil in sufficient amount and the payment of the proceeds thereof for such necessary storage facilities.

and a copy of which I am handing you.

You will note that the amendment by its terms recognizes our right to obtain storage through exchange of oil, but further authorized us to sell royalty oil and obtain storage with the proceeds of such sale. If adopted, this will save a great deal of trouble, and in the present cases which we are considering might save the Government several hundred thousand dollars—possibly half a million dollars.

I am therefore holding up the proposed contracts indirectly by taking abundant time for the consideration of bids, etc., with the hope that meantime this amendment may be adopted and that we may obtain the resulted suggested by the large saving which I am confident will accrue.

If you will agree with me in this matter, would you have the amendment presented to Mr. Kelley with your approval? I am confident that should you see your way clear to take such action the Congress would unhesitatingly adopt the amendment. It may, or may not, be necessary to go fully into the details of what we are trying to do at Pearl Harbor; of course impressing Congress with the view that too great publicity should not be given to the subject.

Very sincerely yours,

(Sgd) ALBERT B. FALL.

Enclosure in above letter (Pl. Ex. 8A) offered.

Amendment to Be Proposed to H. R. 11228, Union Calendar No. 342

Amend the paragraph headed "Bureau of Engineer-
286 ing" by adding after the figures $1,675,000, page 25, House print, the words:

"Provided further, That storage of fuel oil from Naval oil reserves may be provided either by exchange of oil for such storage or (and) by sale of royalty oil in sufficient amount and the payment of the proceeds thereof for such necessary storage facilities."

I never saw that letter until after it was written and sent, but Fall did mention the matter to me before he left for the West, presumably because I was dealing with Pearl Harbor storage.

I did not prepare the memorandum of April 13 (Pl. Ex. 7B). I received a copy of it, I presume it was sent to other officers for their guidance.

I had some discussion with Sutro, counsel for an oil company, as to the legality of the exchange of crude oil for tankage. We disagreed on the question. He thought there was no legal authority for it and I thought there was. I think I mentioned to the Secretary that Sutro and I had had an argument over the authority to do it, and I thought we had the legal right to do it, and the Secretary knew my view. I have a distinct recollection that there was some such conversation. I do not recall that a copy of the opinion of Sutro came under my view. That report was written and signed after the talk that Sutro and I had, and I guess it went into the files, but I do not know where it went. Dr. Bain was present at the time Sutro and I had this argument.

I have here the original report of Glenn B. Morgan on the placer mining claim in Teapot Dome, it was written and signed by Morgan, approved by Baker, the then Chief of the Field Division at Cheyenne. It is dated July 26, 1917, and has been on continuous file in the Interior Department since it was made. It was filed in the General Land Office August 13, 1917.

Report of Glenn B. Morgan (Pl. Ex. 9) offered.

287 Report of Glenn B. Morgan on the validity of oil placer mining claims on Naval Petroleum Reserve No. 3. Date, July 26, 1917.

The report in full was offered in evidence, not generally, but specially to show the information going to Secretary Fall, and not as substantive evidence of the matter therein contained. The only material parts for the purposes of this case are excerpted as follows:

The Commissioner,
General Land Office,
Washington, D. C.

Sir:—

In accordance with the instructions contained in letter "FS" HLU, of October 23, 1916, I made a preliminary examination and report on the general conditions in the Teapot Oil area dated October 27, 1916, including data with respect to occupancy thereon and development done within the last five years.

* * * * *

(Inasmuch as practically all the lands in the naval reserve have been occupied since 1910, and inasmuch as assessment work has been done thereon to cover practically all of them since 1909, for a portion, and since 1910 for the balance, it would seem that the only practicable method of investigating would be an investigation of the reserve as a whole, paying particular attention to those tracts on which developmental work or drilling has been done, and also to those tracts which are most suitable to the needs of the Navy.)

* * * * *

In view of the instructions quoted above the investigation was confined principally to the question of discovery before the withdrawal and to the question of diligent pursuit leading to discovery on the dates of withdrawal. As to the latter phase, (there were no attempts being made to drill for oil inside the reserve on the dates of withdrawal, which were September 27, 1909, and June 18, 1910, so that in reality the investigation was largely limited to early discoveries in this field.) However, it would not be fair or safe to assume that the existence of discovery would be apparent on the ground for several reasons:

* * * * *

"1. (That the present occupants of and claimants to the Reserve land undoubtedly intend to exert every effort to hold and obtain either title or preferential rights to lease said land. They have been expending large amounts for assess-

ment work annually for the years 1911 to 1916 inclusive. Assessment affidavits have been filed in the interest of the Societe Belgo-Americaine des Petroles du Wyoming aggregating about $6,000.00 per year for the above named years for lands almost entirely within the confines of the Reserve. It is true that this assessment work consisted mainly in building roads and bridges, constructing reservoirs for well drilling water, and in drilling shallow validating holes, yet it is also true that this company (Societe Belgo Americaine des Petroles du Wyoming of Wyoming) which is practically owned by the Wyoming Oil Fields Company, which in turn is owned and controlled by the Franco Wyoming Oil Company, has established itself upon the Naval Reserve, and has expended large sums thereon and it is likewise a matter of common knowledge that the said outfit intends to remain in possession and control until ejected by the courts or until the land titles are finally adjudicated.)

"2. Although no application for patent has so far been submitted for lands in the Reserve by this or any other claimants, it would be folly to assume that they would not attempt to set up early discoveries as the basis for their claims. Such early discoveries might be showings of
288 oil in shallow pits and assessment holes or developed oil seeps and springs, or showings of oil in shallow drill holes such as spring pole holes. All of these conditions prevail in the Salt Creek field, and it is the experience of men who have worked in Salt Creek, myself included, that there is absolutely no present evidence on the surface of those alleged early discoveries. Assessment holes and prospect pits were almost inevitably dug in the low places such as draws and creek beds, and were soon filled up by the erosion and wash, and the evidence, if such it were, entirely obliterated. The same is true to a great extent with regard to the shallow drill holes.

* * * * *

In the absence of positive evidence as to discovery which the applications for patent should contain if they had been filed, it became necessary in this investigation to open up and examine all of the avenues of information relative to the Teapot field. It is my theory that this report should cover so far as possible, all sources of information and data in order to forestall and to negative further efforts of the claimants of these lands to obtain title or to obtain a preferential lease. The report should likewise be sufficiently complete and full as to the details of early discoveries so that if it be-

came necessary the Department could go into court and ask for an injunction or writ of ejectment with a fair chance of overcoming any possible contentions the defendants might set up.

With these thoughts in mind, and with a very strong feeling that the occupants of the Naval Reserve lands are prepared to go to any extreme to hold the same, I made every effort in this investigation to run down all of the facts in this case, as well as to inquire into all rumors that came to me in regard to alleged discoveries. Said investigation not only included a personal examination of the field on three different occasions, but I interviewed a large number of persons who were acquainted with the conditions on the Tea-
289 pot Dome prior to the withdrawals and obtained affidavits from most of them. These witnesses include early locators, assessment men, drillers, promoters, ranchers, laborers, teamsters, and business men. They were widely scattered, not only in Wyoming, but in other states, and it became necessary to obtain authorization for the purpose of securing evidence outside this division. The said investigation covered a period from about February 1st to July 13th, 1917, although in the interim I had occasion to make investigation and reports of other cases.

I therefore respectfully submit the following report which is in the nature of an opinion as to the validity of the oil placer claims on the Naval Reserve, together with various proofs in affidavit form tending to substantiate the same.

* * * * *

Abstracts of Titles and Comments Thereon.

At the outset of this investigation it became obvious that the first step should be an examination of the records of Natrona County for the purpose of constructing or compiling a brief and reliable and clear abstract of title to the various holdings in the Teapot Reserve. This was done not only for the purpose of determining who claimed the said lands, and the different chains of title upon which such claims were based, but also for the purpose of getting the names of probable witnesses, such as the various locators, persons who had made assessment affidavits and parties of interest.

The said abstract, which is a part of this report, is made up on large sheets of paper in a tabulated or diagram form. It takes each tract of land in the reserve by units, and as far as possible a section of land was treated as a unit. However, in

certain instances it was necessary to break up a section into several units to avoid confusion as to the different chains of title.

* * * * *

Validity Of Claims.

Inasmuch as the withdrawal of September 27, 1909, and incidentally that of June 18, 1910, have been held valid by the Supreme Court of the United States, the only valid claims in the Naval Reserve would be those on which discoveries of oil or gas had been made prior to the said withdrawal orders, or those on which work was being diligently prosecuted at the time of the withdrawals leading to such discovery. The act of June 25, 1910 which expressly authorized the President at any time in his discretion to make withdrawals and to provide for the exception from the force and effect of any such withdrawal order the rights of any person who at the time of the withdrawal was a bona fide applicant or claimant of oil or gas bearing lands, and who at such date was in diligent prosecution of work leading to the discovery of oil or gas, merely extends the exception to those who at the time of the order of withdrawal were in possession and diligent prosecution of work. Therefore the general discussion of the validity of the various claims in the Teapot Reserve will be divided into three parts:

1. Diligent prosecution of work leading to discovery:

2. Actual discovery of oil or gas.

3. Assessment work on the claims, especially for years of withdrawal and subsequent thereto.

For the purpose of abbreviating and clarifying the treatment of the subject, it is believed that the claims should be taken up by groups rather than individually, for the reason that the status is the same for a large number of them, and a report on each claim or quarter section would involve repetition and unnecessary work, therefore it was considered that the logical method would be by groups according to location.

* * * * *

280 Then follows a detailed discussion of each group of locations and an abstract of evidence with regard to the facts on each group of locations.

Conclusion.

In conclusion it will suffice to state that in my opinion which is supported by the evidence, there are no valid titles to lands in the Naval Reserve, that the asserted claims cannot withstand the force and effect of the executive withdrawal orders, and that the right of the Government to go upon any part of the said Reserve to prospect for oil or gas has not been impaired by any act or acts of the claimants to said lands, or by the legal status of said lands. That the present occupants of the Reserve are trespassers thereon, and that they have no shadow of right or title thereon. It is also my belief that they are to a great extent holding said lands and making surface improvements thereon with a view of obtaining leasing privileges in the event of the passage of a law of that nature.

It is also my opinion that a great danger exists in allowing said occupants to go ahead and develop lower sands in this area. That the said danger consists of probable damage to the field and waste of oil or gas; that the lower sands below the Shannon probably contain oil or gas under great pressure; that development of the dome unless accompanied by suitable precaution is liable to cause great waste of oil or gas, and that the same methods of drilling, casing, etc. applied to this field as are commonly practiced in the Salt Creek field, will probably cause waste and damage to the Teapot field such as existed in the Salt Creek field, and probably to a greater extent.

It is a well known fact that there is a large and deplorable waste in the Salt Creek dome, due to faulty drilling and casing methods and to the great pressure of the oil and gas coming from the Wall Creek sands and the overlying shales.

Recommendation.

It is respectfully recommended that action be taken with a view of bringing suit in the United States District Court to secure an injunction to restrain the present occupants of said lands, the Societe Belgo-American des Petroles du Wyoming of Wyoming, from further occupancy of said lands, and from further operations thereon, not only on the grounds of trespass, but for the purpose of preventing further tres-

pass, and the threatened danger of damage and waste by such further trespass.

(Sgd.) G. B. MORGAN,
Mineral Surveyor, G.L.O.

Approved:
(Sgd.) A. Baker,
Chief of Field Division.

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291 Official Travel Voucher, A. B. Fall, offered, showing he left Washington, Dec. 1, 1921, and travelled to various points, arriving at Three Rivers, N. M., Dec. 13, and left Three Rivers Jan. 1, 1922, travelling to El Paso, Texas, leaving there Jan. 24, 1922, and arriving in Washington, D. C, Jan 27, 1922, in the forenoon.

Official Order, March 4, 1922, (Pl. Ex. 11) offered.

Department Of The Interior

Washington,

March 4, 1922.

Order

Subject to the supervision of the Secretary, the Director of the Bureau of Mines will have charge of matters pertaining to and arising in connection with the care and administration of naval petroleum reserves, including the drilling and production of oil and gas therein. The Bureau of Mines will, of course, cooperate with other bureaus as to the matters falling peculiarly within their province, so that there shall be no duplication of work performed or records kept.

ALBERT B. FALL, Secretary.

I produce a memorandum statement regarding leases made by the Interior Department in the Salt Creek field just North of the border of Teapot Dome, which leases were made by competitive bidding at auction on June 15, 1921.

Pl. Ex. 12 offered.

Production, Royalty, Bonus, and Royalty Value to Sept. 30, 1923, of Tracts in Salt Creek Field auctioned June 15, 1921 at Douglas, Wyoming

Lease No.	Tracts	Bonus $	Acreage	Bonus per acre	Total production to Sept. 30 1923	Royalty Rate %	Royalty Bbl.	Royalty Value
029175	U, NC, MB	26,700	480	55 63		25%		
029177	P, J, M, A.	279,000	600	465 00	$236,981 15	33 1/3	74,976 10	124,025 69
029179	KZ	2,000	160	12 50	3,232 89	25	800 00	1,161 16
029180	LA	2,700	160	16 88		25		
029181	JY, IX, HW	14,600	480	30 42	85,687 97	25	21,369 93	35,742 46
029186	BQ, Z	58,750	320	183 59	225,304 88	25	54,749 91	89,561 34
029189	Y	13,300	160	83 75	11,023 36	25	2,016 65	3,104 60
029190	T	5,000	160	31 25	17,178 22	25	4,127 51	5,870 42
029192	GV	12,000	160	75 00	26,941 87	25	5,742 45	9,914 65
029193	OD	3,200	160	20 00	1,406 42	25	366 65	585 21
029194	X, S	18,000	320	56 25	18,428 40	25	4,949 18	7,806 67
029196	C	226,000	160	1,412 50	644,891 95	33 1/3	176,017 06	273,606 09
029197 1/3	N	18,000	160	112 50	131,427 70	33 1/3	39,949 04	64,171 76
029197 1/4	AP, W, V,	81,000	400	202 50	231,714 94	25	55,959 68	86,859 18
029200	D, F, H, B,	332,000	640	518 75	194,255 61	33 1/3	65,068 97	110,953 88
029204 1/3	K (part)	52,000a	100	520 00	38,884 34	33 1/3	12,659 59	22,169 36
029204 1/4	Q	1,000	160	6 25	66,682 82	25	17,225 63	28,384 18
029205 1/3	K (part)	L, 51,000b	220	231 82	540,172 04	33 1/3	178,745 96	268,874 17
029205 1/4	FU, R	36,600	320	114 38	93,794 93	25	24,825 19	40,242 61
029208	ET	21,000	160	131 25	137,282 67	25	33,306 00	55,407 77
029210	I, G, E, O	341,500	600	566 92	147,332 78	33 1/3	47,559 23	78,763 28
029214	DS, CR	91,550	320	286 09		25		
		$1,687,000	6,400	257 61	2,852,604 94	28 76%	820,416 13	1,307,204 58

a This bonus was for 160 acres tract that was split in drawing leases and parts included in two separate leases along with other tracts.

b Part of this bonus included in second line above.

293 Cross-Examination

I studied law at the University of Kansas and graduated in 1891; was admitted at once in the District Court of Kansas, and in the Supreme Court three or four years later.

I began my work in the Interior Department September 1, 1894, as Examiner of Mining Claims in the General Land Office, examining mineral entries and conflicts as to mineral claims. After nine years of that work, I was appointed a member of the Board of Law Review of the General Land Office in the same Department. That Board reads and reviews letters, papers, opinions and decisions prepared for the signature of the Commissioner of the General Land Office. We reviewed principally questions of law. We prepared the decisions to be signed by the Commissioner. There were four members. I was a member two or three years. Then I became Assistant to the Secretary of the Interior, having as such rather miscellaneous duties, but I did review some of matters of law relating to public lands and reclamation matters. After about a year I became Chief Law Officer of the Reclamation Service and held that position a little over a year. Then I was Assistant Attorney and served on what is known as the Board of Appeals in the office of the Secretary of the Interior until March 18, 1921, when I was appointed First Assistant Secretary of the Interior.

During all this period I had been studying, considering and preparing opinions in relation to legislation by Congress concerning the public lands, and cases arising before the Department. I had in all this work to consider and construe congressional legislation with reference to public lands. Work with relation to mineral entries, mineral lands and mineral land laws covered largely the time except the one year I was on reclamation work.

I had some conversation with Mr. Sutro in relation to the legality of a contract such as this here in issue. Briefly I told Mr. Fall I had had an argument with Sutro. I stated to Secretary Fall my opinion that the law gave him the authority to do the things done by this contract. I had heard of the opinion of the Judge Advocate General of the Navy to the same effect. Secreary Fall was a lawyer by profession. I do not know whether Secretary Denby is a lawyer or not.

294

It has been customary to allocate the work in the Interior Department between the Secretary and the two Assistant

Secretaries. In Washington the Department has about 5,000 employees and in Washington and in the field altogether about 18,000. Not all of those are familiar with questions relating to leases of mineral lands and other lands. The Secretary is at the head and calls on such employees as he sees fit for such advice or information as they may give. There are not many acquainted with that sort of question in the office of the Secretary; there is the Solicitor and 22 or 23 assistant attorneys who are more or less familiar. Many of them have not had experiences in mineral law or leasing,—probably 4, 5 or 6 have some experience in dealing with mineral claims and questions.

There is in the Department a Bureau of Mines. It is a scientific bureau, looking after mine-safety work and in the last few years dealing more or less with the supervision of oil production, and coal mines on government leases, and more or less familiar with that work. Probably there are two or three hundred employees of that bureau in Washington and a number in the field. All of those were available to the Secretary, but not all of them were informed in relation to mineral matters and oil matters; there are various lines of work. I think there were only five or six men in Washington in what is known as the oil section; and some others in the field—supervisors and several field advisers and officers. Then there is a bureau called the Geological Survey; I cannot say how many men there are in that, but several hundred. How many of them were familiar with oil conditions and matters I cannot say, but quite a number of them knew more or less about oil geology and oil conditions.

In the Department of the Interior the custom is that nearly always the work of investigating any particular claim, and passing on all of the leases is done by others under the direction of the head of the Department and not by him personally, and the work is submitted to him in the form of written memoranda or written opinions. He then, at the end, manifested his approval by signing the decision if it 295 is a decision, or a lease if it is a lease. It would not be possible for one man to do all the work of the Department. A large percentage of the work never gets to the Secretary's desk; it is divided among three men; but, as to what does get to him, his decision is manifested by his signature. I am not familiar with the division of work in the Navy.

I did not see Admiral Potter's memorandum (Pl. Ex. 4) nor Admiral Potter that I knew of.

Mr. Ambrose was a young man who had some experience in the oil business in the West, and when I knew him held the position of Petroleum Engineer in the Bureau of Mines in Washington.

I remember sending the telegraph message of December 6, 1921, to Fall in which I said "Navy Department requests that we proceed as originally planned with reference to exchange of oil and securing storage." That request came to me from the Navy Department. That was something like two months before I heard of a proposition of Sinclair; but that telegram does not relate to any leases; it relates to the disposition of oil which we were getting from previous leases. There was a number of leases in the reserve in California, and a number of others, which were producing oil. There had been a lease of 22 wells, 14 of which were to the Pan American Petroleum Company and 8 of which were to the United Midway, and I think there had been one or two wells in adjoining sections,—offset wells—offset leases; in No. 2 there had been some preference right leases to old mining locations, to individual claimants. As to the 22 wells, the original bid of Doheny was the best for the entire 22 wells, and the Geological Survey recommended that the award be made to Doheny's Company for all. The United Midway company had been presenting a claim before the Department based on an old mining location covering five or six hundred acres in the reserve. They had been denied and I think a motion for the further consideration, for reconsideration had been [field], brought to the White House in some way, and was forwarded back to the Interior Department after Mr. Fall became Secretary. He had that under consideration in the early part of 1921, May and June, at the time these bids for the twenty-two wells were under consideration. I am not familiar
2986 with all of the details because I was absent from June 15th to July 15th, but my recollection is that Mr. Fall spoke to Mr. Doheny, or wrote to him about the claims, and this company and Mr. Doheny finally agreed to give up their claim for his preference to the United Midway for eight of these wells.

I presume you might call it a settlement with the United Midway of its claim on a part of the lands that were being leased and I imagine they had filed a quit claim deed releasing all of their claims in consideration of receiving the lease on the eight wells when they originally applied for the lease for the rules required that; there is some question whether that quit-claim became operative only if the lease was

granted; no doubt that was the intention. They are required to file quit-claim deeds with applications for leases in all such cases. They had filed their claims under the act of February 25, 1920, just exactly as the Pioneer had filed its claim under that act on a portion of the Teapot Dome. And this matter of allowing the United Midway eight wells apparently settled the controversy as to their application, for I never heard them present any claim after it. The United Midway application had not gone quite so far along as the Pioneer; the United Midway case, as I recall it, had been denied and had filed a petition for a rehearing within the time prescribed by the rules, and in the Pioneer case it had gone further,—a motion for rehearing had been denied and they had filed a third petition, which asked for the exercise of supervisory authority by the Secretary. At this point, the witness was handed the file from the General Land Office pertaining to the Pioneer and Belgo claims. After examining the files the witness stated 'That is the file'. That application had been set down for hearing in September, 1921. I then told the attorneys I would not act upon the matter but they might apply to Secretary Fall for a hearing at a date convenient to him. I advised the attorneys that the hearing before me would not be held and would be held before Secretary Fall at some later date convenient to himself. So far as I know it rested in that situation when the lease in issue here was granted.

297 I saw the letter of the Assistant Secretary of the Navy of December 9, 1921; it was received by our department some time in December. I think that was the first intimation I had as to the secrecy. I saw the concluding sentence of the letter of Secretary Roosevelt and understood it to relate to the Pearl Harbor oil tanks. That sentence was "In view of the fact that this project is embodied in the war plans of the Navy Department we request that all the matters in connection therewith be regarded as confidentially as possible." Mr. Fall, when leaving Washington April 13th, mentioned something about the desire that the location of this storage be kept secret, as well as the fact that he did not want one contract given out until the other was signed.

As to the legality of the plans for storage the question before the Department was as to whether storage tanks in which to store fuel oil for the Navy could be paid for out of royalty oils and in royalty oils instead of a cash appropriation by Congress, and that question had been submitted to the Solicitor, or rather the Judge Advocate General of the Navy for

an opinion. Some time prior to this letter, which was December 10th, Admiral Robison had advised me over the phone, I presume as Acting Secretary, because I was Acting Secretary at that time, that an opinion had been rendered by the Judge Advocate General sustaining or upholding the legality of such an arrangement. In this letter I asked the Admiral to confirm that in writing, and send a copy of the opinion.

I afterwards received a copy of the opinion. This information was before me when I talked to the Secretary about Sutro and when I told Fall my own opinion.

I was asked to prepare memoranda for Secretary Fall prior to the Executive Order (Exhibit A of the Bill of Complaint). I prepared a one page memorandum for Secretary Fall. I cannot recall definitely who prepared the Executive Order; I have examined our files and find a letter transmitting a draft, Original draft, of the Executive Order, that had my initials on it, so that I either wrote the letter, or reviewed it after it had been written. It is about the same as to responsibility.

298 Letter, Denby to Fall (Def. Ex. A) offered by Defendant as part of cross-examination.

The Secretary of the Navy

Washington, December 14, 1921.

My dear Mr. Secretary:

I am in receipt of Acting Secretary of the Interior Finney's letter of December 10, 1921, with reference to certain matters in connection with the oil to be obtained from the Naval Petroleum Reserves and the disposition thereof.

In confirmation of Admiral Robinson's telephone conversation with Judge Finney, I beg to inform you that it is my desire that the Interior Department proceed to handle the oil and make the exchanges for fuel oil and storage according to plans as set forth in Navy Department letters of October 25, 1921, and December 9, 1921.

In this connection I would quote for your information an extract from an opinion, which I have approved, of the Judge Advocate General of the Navy anent the question of the exchange of royalty crude oil for fuel oil in storage:

"The act above quoted (naval appropriation act of June 4, 1920, 41 Stat. 812) authorizes the Secretary "to use, store, exchange, or sell the oil and gas products from the proper-

ties within the naval petroleum reserves and those from oil royalty oil from the lands in the naval reserves for the benefit of the United States". The authority granted the Secretary of the Navy to 'store' this oil and its products necessarily carries with it the authority to designate the place of storage and the authority to provide the means of storage. The authority granted 'to exchange' is unrestricted i. e., the act does not specify nor limit what may be taken in exchange for the oil and its products. Hence, if the Secretary of the Navy desired 'to store' some of the oil and its products, he has the authority 'to exchange' a part of the crude oil for oil or for tanks or for both fuel oil and tanks under such arrangements as he may see fit to negotiate with the lessors or others; and said fuel oil and tanks so received in exchange may legally become the property of the United States'.

I would further state that it is my desire for the Department of the Interior to use all royalty crude oil until further notice in payment for tankage for the Navy and for filling said tankage with fuel oil for storage. It is presumed, therefore that the Department of the Interior will proceed as soon as practicable to make a contract for constructing the storage tanks at Pearl Harbor, Hawaii, in accordance with the plans and specifications recently forwarded to your department. Plans and specifications for storage tanks at other points will be furnished in due time prior to the completion of the Pearl Harbor project.

It is not anticipated that any of the royalty oil accruing to the Government will be used to furnish a current supply of fuel oil to the Navy for several years to come. If practicable, I also desire to use the accrued royalty oil received during the months of November and December, 1921 as a credit against the construction and filling of the Pearl Harbor storage. If, as it appears from Acting Secretary Finney's letter of the 19th instant, arrangements have already been made with reference to the disposition of the November and December royalty oil, I should be pleased to know as soon as practicable whether or not the equivalent fuel oil to be obtained therefor can not be used for filling in part the storage tanks to be constructed at Pearl Harbor Hawaii.

269 I have designated Rear Admiral J. K. Robison as my representative to handle all details in connection with naval petroleum reserve questions, and I feel sure that

he will cooperate with the officials of your department in every way possible.

If entirely practicable, I should be pleased to receive a monthly summary of the operation of the reserves of the progress of the work being done on storage tanks in order that the Navy Department may be kept in close touch with this most important unit of its future fuel supply.

Sincerely yours,

EDWIN DENBY.

I prepared a memoranda for the Secretary indicating that I thought the matter of transferring, in a sense, whatever sense is covered by the Order, to the Department of the Interior some of the work in relation to the administration of Naval Reserves, could be done, and I initialed a draft of a letter transmitting a form of an Executive Order, which letter was subsequently signed by Secretary Fall. A draft of Executive Order and my memorandum were enclosed to Secretary Denby. I concurred in it and approved of it. The reasons stated in the memorandum were my reasons.

"Mr. Lacey: We offer this in evidence.

Whereupon Defendants' Exhibit "D" was marked for identification.

Mr. Roberts: That is the memoranda?

Mr. Lacey: Yes.

Q. This, then, is a copy of the executive order as you prepared it, excepting the interlineations that are there found now, is that correct?

A. Well, I cannot recall, Judge, whether I prepared that or not; at least it went with the letter which I initialed.

Q. It went with your approval?

A. Yes, and this seems to be a copy except for these pencil interlineations which were not in it at that time.

Mr. Lacey: We offer it in evidence, then, leaving out—

Mr. Roberts: May we not strike those out so that the stenographer will not be confused with it?

Mr. Lacey: We want to use them later.

Mr. Littleton: Read it into the record without the interlineations, but the interlineations were made afterward.

Mr. Roberts: Yes, in the Navy Department.

Mr. Lacey: If you will read that then, please.

309 Mr. Hoover thereupon read Defendants' Exhibit "D" as follows:"

* * * * *

"(By Mr. Lacey) It has been mentioned by your Honor, that there are interlineations in the executive order and the draft as prepared. We will later show that those interlineations were made by the Navy Department before the executive order was signed, and for the purpose, and solely for the purpose of retaining a real control in the Navy Department."

Draft of Executive Order (Def. Ex. D) offered by defendant as part of cross-examination.

Executive Order

Under the provisions of the Act of Congress approved February 25, 1920 (41 Stat., 437), authorizing the Secretary of the Interior to lease producing oil wells within any naval petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder or any part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat., 812), authorizing the Secretary of the Navy to conserve, develop, use, and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves; the conservation, development, use, and operation of oil and gas-bearing lands in Naval reserves Nos. 1 and 2, California, Naval Reserve No. 3, Wyoming, and Naval Oil Shale Reserves in Colorado and Utah, is hereby committed to the Secretary of the Interior, under supervision of the President, and he is authorized and directed to perform any and all acts necessary for the protection, administration, and development of the resources of said reserves, subject to the conditions and limitations of existing laws or such laws as may be hereafter enacted by Congress pertaining thereto.

The White House,

May ...., 1921.

Letter Fall to Denby (Def. Ex. B.) offered as part of cross-examination.

Department of the Interior

Address only the Secretary of the Interior — Washington — May 11, 1921

Personal

:Of :Of (Mat): :J. A. C :Sol :C. O :Appt.	:Division of Records: Secretary's Office: Receiver: Dec 1 1921: Navy Department	:Est :Ptg :Adv: : : :

The Honorable,
The Secretary of the Navy.

301 Dear Mr. Secretary: File 13668-84:257:33

Referring to our conversation yesterday, and to your suggestion to the President that the Secretary of the Interior be placed in charge of administration of the laws relating to naval reserves, I am submitting herewith for your consideration a brief memorandum stating the facts and law with respect to naval reserves, a tentative form of letter for your signature if it meets with your approval, and a form of Executive order for the President's signature if it meets your suggestions of yesterday.

Please consider the same and give me any criticisms or suggestions which may occur to you. If they meet with your approval and no changes occur to you, kindly return them, with your approval, in order that the matter may be taken up with the President.

Respectfully,

ALBERT B. FALL,
Secretary.

Inclosure 19756.

Proposed letter for President's signature, forwarded with last exhibit (Def. Ex. C) offered as part of cross-examination.

My dear Mr. President:

The act of February 25, 1920 (41 Stat. 437), authorizes the Secretary of the Interior to lease producing wells in naval

petroleum reserves and authorizes the President to permit the drilling of additional wells or to lease the remainder of any part of any claim in such reserves, with preference right to the claimant or his successor. A clause in the appropriation act for the year ending June 30, 1921 (41 Stat. 812), authorizes the Secretary of the Navy to take possession of unappropriated lands within naval reserves and to conserve, develop, use and operate the same "directly or by contract, lease, or otherwise."

To avoid conflict, delay, and duplication, it occurs to me that the matter may be best administered through one agency, and I have to suggest that the Secretary of the Interior be directed, under your supervision, to administer all of the various provisions of law cited relating to naval petroleum reserves heretofore created by Executive order, the oil and gas accruing to the United States to be utilized by or for the Navy in accordance with the provisions of existing law.

Under the authority vested in me by said appropriation act, I request and recommend that you take the necessary steps to impose this duty upon the Secretary of the Interior. The details incident to this transfer of authority and to the disposition of the oil and gas produced will be arranged cooperatively between the Interior Department and this Department.

Sincerely,

SECRETARY.

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302 Memorandum prepared by Finney (Def. Ex. E) offered as part of cross-examination.

Department of the Interior

Washington

Memorandum

The so-called naval oil reserves were created by Executive order of the President. There are two in California, one in Wyoming, and two shale oil reserves in Colorado and Utah.

Section 18 of the oil leasing act of February 25, 1920 provides with respect to mining claims initiated prior to withdrawal of lands in naval reserves, that the Secretary of the Interior may lease to the claimants producing wells only, with an area of land sufficient for their operation. The President, in his discretion, may permit the drilling of additional wells by the claimant or his assignee, or he may, in his dis-

cretion, lease the remainder or any part of any such mining claim upon which wells have been drilled, the mining claimant or his assignee to have their preference right to such lease.

A clause in the naval appropriation act for the year ending June 30, 1921 (41 Stat. 812), directed the Secretary of the Navy to take possession of properties within naval reserves on which there are no pending claims or applications for permits or leases under the oil leasing act and "to conserve, develop, use, and operate the same in his discretion directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas" as well as the royalty oil from leased lands in naval reserves.

It will be perceived that the Secretary of the Interior has jurisdiction to lease producing wells, the President authority to permit additional wells to be drilled or to lease the remainder of any mining claims in naval reserves, and that the Secretary of the Navy is authorized to conserve, develop and use the naval reserves free from existing claims "directly or by contract, lease, or otherwise." Therefore, the President may commit to the Secretary of the Interior the matter of authorizing additional wells or leases under section 18, of the leasing act and the Secretary of the Navy may, under authority of the naval appropriation act cited, request the Secretary of the Interior to handle for the Navy the conservation, development, and operation of other lands in naval reserves. The royalties from existing leases and such other royalties as may be derived from future leases in naval reserves may be turned over to the Navy Department directly or may be exchanged by the Secretary of the Interior, to the end that the Navy may have its equivalent in fuel oil.

This would avoid the duplication, antagonism, and division of authority which existed under the past administration with respect to these matters.

Referring to certain suggestions in the memoranda and letters about duplication of labor, I do not think there had been much of that work done in the Navy; few leases had been made. Such supervision as had been given by
3:3 the Navy was given by their Bureau of Engineering. They had nothing corresponding to our Bureau of Mines, or our Geological Survey or our corps of employees familiar with the matter of leasing; so that if the Navy without our assistance, had been called upon to make leases and

handle these matters, it would require them to create a duplication of agencies our department already had,—that was the thought expressed in the memoranda.

The leases of June 15, 1921, practically completed the leasing of all known oil lands in Salt Creek. Everything there was either leased or covered by applications for leases, except two or three tracts at the north end. In the June 15th leases the Department fixed flat royalties and the only thing offered for competitive bidding was the matter of bonus.

The Act of February 25, 1920, had different kinds of rights to deal with, and different kinds of applications, and each section of the act had its own separate method for offering leases or obtaining them, at least that is largely true. Section 17 under which the sale of June 15 was made, required that the leases be disposed of at auction or by competition. Other sections left the whole matter of the regulation to the Secretary of the Interior. Certain other sections vested the discretion in the President, but prescribed no method to be employed; but those were dealing with claims based upon mining locations. There was no regular way of leasing under the act of February 25, 1920, which applied to all leases; we had appropriate regulations covering each of the different situations. The Act of June 4, 1920 prescribed no method of leasing.

In the leases that had been made in Salt Creek, there were drilling requirements compelling drilling of a first well within a given time and additional wells at stated intervals. It was not left optional to the Lessee to drill and develop as he might feel disposed. Including those leases sold June 15, 1921, the leasing in Salt Creek covered the entire South part of the field to the line of Teapot Dome reserve. It was leased right down to the line of the Reservation and the leases auctioned off on June 15 had the like requirements as
304 to drilling as those that had been let before. These leases had been determined upon by the previous administration of Secretary Payne and had been ordered advertised and the royalties fixed before Fall took office. The real policy and the direction that these leases be made was by Secretary Payne. The leases auctioned off on June 15, 1921 covered 6,400 acres.

Letter Commissioner of General Land Office (Def. Ex. F) offered as part of cross-examination.

Department of the Interior
General Land Office
Washington

March 3, 1921

Directing sale of leases

Register and Receiver,
Douglas, Wyoming.

Sirs:

You are directed, pursuant to paragraph 14 and 15 of the oil and gas regulations, circular 672, to offer for lease in units of 160 acres, of which one person or corporation may purchase not exceeding 640 acres, the lands described in the attached notice, being unclaimed lands in the Salt Creek
305 Oil Field, at a royalty of 25, percent for oil and royalty for gas fixed by the amendment of said circular dated December 20, 1920, to the individual, corporation or association qualified under the leasing laws who shall pay the highest bonus for each unit. Copies of notice are enclosed, one of which should be posted in your office and you will advertise the same in the Wyoming oil World once each Week for a period of thirty days.

The date fixed for sale, which is left blank in the notice, should be set as early as practicable so as to be subsequent to the expiration of the thirty days notice, when the sale has been made and the papers are in shape, you will transmit them to this office with your report.

Very respectfully,

Commissioner.

Approved, Royalty to be 30% instead of 25% as recommended.
Payne.

March third, Nineteen twenty-one

While the Teapot Dome lease was in contemplation I was considering all of the applications for leases under the General Leasing Act forwarded up from the General Land office, and I was passing on ordinary Land Office appeals and was doing more or less work in connection with the proposed contract at Pearl Harbor.

Fall turned over to Dr. Bain and me the Doheny contract, and took care of Teapot Dome himself. We had in charge

the contract with Doheny interests and the Pearl Harbor storage tanks, etc. Dr. Bain was an engineer and I depended on him for the engineering and technical knowledge. I attended to the business and legal matters. I signed the contract of April 25, 1922, during the Secretary's absence, after I had wired the Secretary in regard to the contracts. I was the senior officer of the Department who had charge of bids for that contract.

Redirect Examination.

I identify the letter shown me.

Letter Fall to Doheny, July 8, 1921, (Pl. Ex. 13) offered.

(After referring to the United Midway settlement and
306 expressing appreciation of Doheny's giving up 8 of the 22 wells so that the Midway lease can be made, the letter proceeds:)

There will be no possibility of any further conflict with Navy officials and this Department, as I have notified Secretary Denby that I should conduct the matter of naval leases under direction of the President, without calling any of his force in consultation unless I conferred with himself personally upon a matter of policy. He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau of his department, but only with himself and such consultation will be confined strictly and entirely to matters of general policy.

Very sincerely yours,

ALBERT B. FALL.

The telegram of December 6, from me to Fall and Assistant Secretary Roosevelt's letter of December 9, referred to the disposition of royalty oil from leases theretofore made on reserves in California. As I recall it, the question was the disposition of the royalty oil. If it should be converted into cash, and the cash deposited in the Treasury, it would go into the miscellaneous receipts and not be available for any use by the Navy Department, and if, on the other hand, the royalty were taken in kind, that is—in oil— to be used for the current needs of the Navy, it could be used in exchange for fuel oil to be stored away. It was that subject that was having consideration. The telegram had no reference to any proposed lease in Naval Reserve No. 3 Nor had the letter. It

related to storage of fuel oil at Pearl Harbor. It requested that the plans for this be kept secret.

The Doheny contract of April 25, 1922, was not a lease. It was a contract to build storage facilities to be paid for in oil from the Naval Reserves in California.

Testimony of H. A. STUART, a witness called on behalf of Plaintiff.

Direct Examination.

I am a Commander in the United States Navy. From August, 1918, I had been on duty in the Bureau of Engineering, in charge of the oil office. On April 30, 1920, an order was issued which is the order now handed to me.

Memorandum of April 30, 1920, from Secretary of Navy to various bureaus, etc. (Pl. Ex. 14) offered.

Memorandum.

From: Secretary of the Navy. 30 April, 1920

To: Chief of Naval Operations
General Board
Bureau of Navigation
Bureau of Yards and Docks
307 Bureau of Construction and Repair
Bureau of Steam Engineering
Bureau of Supplies and Accounts

Subject: Establishment of Oil Fuel Office under Secretary's Office Detail of Commander H. A. Stuart, U. S. N.

1. Commander H. A. Stuart has been detailed for special duty under the Secretary of the Navy in connection with oil fuel matters. He has been directed to report to the Chief of Bureau of Steam Engineering for this duty and for additional duty to the Chief of Naval Operations, President of the General Board, Chief of Bureau of Yards and Docks, Chief of Bureau of Construction and Repair, and Chief of Bureau of Supplies and Accounts.

2. This office has been established for the purpose of compiling data relative to the fuel oil and gasoline situation within the United States and in foreign countries, and for furnishing a clearing house for the various activities and policies for the Navy Department. It will in no way parallel the work of the various offices and bureaus but its activities will be so governed as to supplement them.

3. In order that information as to activities of all offices and bureaus may be compiled and available for reference it is desired that copies of all letters affecting policy relative to oil fuel and its use, storage facilities, floating equipment for handling oil, periodical reports of fuel oil and gasoline on hand, etc. be sent to this office.

4. The oil situation is certain to involve intra-departmental matters within a very short time, and may involve international questions. It is therefore necessary that the Navy's requirements, facilities, and policies should be outlined and co-ordinated without delay if they are to carry proper weight.

5. If Congress should pass pending legislation it is proposed to employ technical experts in this office and, if so, their services will be available for the various bureaus.

JOSEPHUS DANIELS.

I remained under that detail until, I think, October 18, 1921, when an order was made ending that detail, which I have here.

Order Secretary of the Navy to various bureaus (Pl. Ex. 15) offered.

October 18, 1921.

From: Secretary of the Navy.
To: Chief of Naval Operations.
General Board,
Bureau of Navigation,
Bureau of Yards and Docks,
Bureau of Construction and Repair,
Bureau of Engineering, and
Bureau of Supplies and Accounts.

308 Subject: Fuel Oil Office under the Secretary's Office.

Reference: (a) Secretary's letter of 30 April 1920. No. 13668-746.

1. The Fuel Oil Office established by the Secretary of the Navy in reference (a), is hereby transferred to the Bureau of Engineering, which will have charge of all the activities performed under this office.

EDWIN DENBY.

After my detail back to the Bureau of Engineering, I reported to the Chief of the Bureau, Admiral J. K. Robison. My duties as to oil continued, although not as extensive as before. From that time on I did not learn from anybody of the actual leasing of Teapot Dome or any negotiation for its leasing. After I was detailed back to the Bureau of Engineering it was the custom, although not necessarily the case, for any official data concerning the oil reserve to go over my desk. Every paper did not necessarily go over my desk. To my knowledge no official data went through the Bureau of Engineering and into the official files of that bureau touching the proposed leasing of Teapot Dome up to the time I was relieved of duty there April 5th, I think it was, 1922.

Testimony of G. O. Smith a witness called on behalf of Plaintiff.

Direct Examination.

I live in Washington, D. C.; am Director of the United States Geological Survey, a bureau of the Department of the Interior; have been such since May, 1907, with the exception of 11 months.

The naval reserves were originally laid out on recommendation of the Geological Survey. The Survey consulted, from time to time from the period of the first laying out of the reserves down to 1920, with the Secretary of the Interior and the President of the United States. About October 25, 1921, possibly a few days later, I was called into consultation by Secretary Fall, who wished to know the opinion of the Geological Survey with reference to the possibility of drainage of the Teapot Dome. He asked that an examination be made by a competent geologist. I ordered the Chief Geologist to order an examination, the geologist being selected being K. C. Heald. On Heald's return to Washington from Wyoming in the latter part of November, I heard his
369 report and with him called on Secretary Fall. Mr. Heald then explained the situation as he understood it as a result of his examination. His report was to the effect that while there had been some amendment to our original ideas regarding the exact location of the saddle between the Salt Creek Dome and the Teapot Dome, that had little to do with the possible drainage, and that in his opinion there was no imminent danger, if any danger, of the drainage of the Teapot Dome proper by reason of wells which might be put down on the Salt Creek side. At the request of Secretary Fall the

report was reduced to writing and I handed it to the Secretary.

After that I was not at all consulted by the Secretary's Office touching the Teapot Dome. To my knowledge no one in my bureau was ever consulted and nothing on that subject went through me as Chief of the Bureau.

Testimony of K. C. HEALD, a witness called on behalf of Plaintiff.

Direct Examination.

I live in New Haven, Connecticut; am Assistant Professor of Geology at Yale University. Until the 1st of September, 1924, I served in Washington in the Geological Survey intermittently since 1909; continuously since 1914. By direction of the Chief Geologist I went to Denver in November, 1921. I saw certain data there and thence went to Salt Creek and Casper, and then came back to Washington. On my return Dr. Smith took me to see Secretary Fall, to whom I made certain communications which were subsequently reduced to writing. This is my report of November 30, 1921.

Memorandum to director, through chief geologist (Pl. Ex. 16) offered for the purpose not of proving the facts as set forth in it, but of proving what was communicated to Secretary Fall on that date.

310 November 30, 1921.

Memorandum to Director,
Through Chief Geologist.
Subject: Naval Reserve No. 3.

The conception of the geologic structure of Naval Reserve No. 3, covering the Teapot dome in Natrona County, Wyoming, as presented in the map by Carroll H. Wegemann in Bulletin 670 of the U. S. Geological Survey, must be modified in the light of more recent and more detailed geologic mapping. The original map by Wegemann (Plate I, Bulletin 670) shows the axis of the saddle separating the Teapot dome and the Salt Creek anticline in the SE ¼ sec. 20, T. 39 N., R. 78 W. The newer work locates the axis in the SW ¼, NW ¼ sec. 28, T. 39 N., R 78 W.

The above is the only vital feature which has been modified by the newer mapping. It is probable that instead of two separate domes in the Teapot structure, as shown by Wegemann, there is a single faulted dome, but this will not affect the potential oil supply.

That part of the Reserve in sec. 16, the NE. ¼ sec. 20 and the N. ½ sec. 21, will certainly be drained of its oil content, although this drainage will be exceedingly slow, judging from the small productions of such offsetting wells as have already been drilled, and the history of water encroachment in the Salt Creek field. That part of the Reserve in sec. 17, the NW. ¼ and the S. ½ sec. 20, the S. ½ sec. 21, the N. ½ sec. 29, the N ¼ Sec. 28, and the NW. ¼ sec. 27, will presumably, but not certainly, ultimately be drained by wells drilled outside the Reserve, although it is possible that faults known to exist but whose magnitude and importance are not definitely known will protect these last mentioned fractions from drainage or flooding.

At the present rate of production a year or more must elapse before any part of the Reserve is appreciably damaged. Only one producing well has been drilled within one location of the line of the Reserve, and this well will not be likely to affect the territory more than 300 to 400 feet distant for some months. That part of the Reserve which it will affect must be regarded as one of its poorest portions.

If appreciable loss becomes imminent, due to intensive drilling near the line of the Reserve, fractions should be leased in the following order:

(1) Land in secs. 16 and 17.

(2) Lands in NE. ¼ sec. 20 and in sec. 21, and in sec. 22.

(3) Lands in remainder sec. 20, in N. ¼ sec. 28 and N. ¼ sec. 29.

No further leasing should be done. The lands last leased will permit some slight drainage of unleased land within the Reserve, but this is unavoidable if an effective barrier is to be maintained between the producing wells and the underground storage.

K. C. HEALD,
Geologist in Charge, Section Geology of Oil and Gas Fields.

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311 Section 16, which I mention in the report as one in which some offsetting leasing should be done, is school land and is outside of the reserve. Section 17 is also outside of the reserve. When I made that report I had a map of the reserve in hand, roughly made in pencil, and it was included in that pencil outline.

I was not afterwards consulted in regard to this matter, nor did I do any further work on that subject.

Cross-Examination.

I left Washington November 8th. I should judge I got to Casper about November 15th. I spent three days in the field; about four hours on the land. There was snow on the ground which covered the flat surfaces. On the ground I confirmed the facts that had been presented to me. There was one critical thing to know, whether or not a certain part dipped in a certain direction, and I ascertained that it did dip in that direction. I went to one place. You ask me whether I can tell much about a structure by getting one particular dip at one particular place and examining it on one side of it. I reply that you can confirm the data that you have in hand. I can confirm the data that I have in hand. Assuming that I had never been on the ground and had nothing except that one observation to go on, I could tell nothing. So far as my actual investigation myself was concerned, I didn't make an investigation of my own that would have told me anything on the ground. I investigated the veracity of the other men as to one particular place and nothing else. I knew nothing of the structure so far as any investigation I myself made was concerned. In addition to including within the reserve the lands in 16 and 17, which are not in the reserve, I also included the N. W. ¼ of Section 20 and the S. ½ of Section 20. At the time I made that statement I made it from my pencil map with the erroneous outline. From looking at the map handed me I find that the reserve includes only the S. E. ¼ and the E. ½ of the N. E. ¼ of Section 20. I reported as though all of that Section 20 was in the reserve. With regard to Section 29, I only mention in my report that part of the reserve in the N. ½ of Section 29. I also referred
to that part of the reserve in the N. W. ¼ and S. ½
312 of Section 20. My recollection is that I had the N. E. ¼ and part of the N. W. ¼ and all of the S. ½ of Section 20 included in the reserve. It is true that my rough sketch contained an error in including this. I cannot now from memory say what part of Section 20 I included in my pencil sketch. What I said about a part of Section 17 being in the reserve is plainly and obviously an error.

I did report that quite a bit of the reserve was liable to be drained. I went there to confirm the claim or statement that the structural conditions were not precisely as they had been represented in the United States Government Geological Survey bulletin 670 and that in consequence serious drainage

of the reserve might ensue. In speaking of a correction that was being made or suggested by somebody I had reference to a report by Carroll H. Wegemann, which I had seen and which had been brought to my attention. I had known Wegemann since 1914. He was an experienced oil geologist. I should think he was 45 years of age. I knew he had had several years experience in government service in oil geology. Since leaving the government he has had outside experience. The matter in his report that I was to look up was this, I was to confirm the position of the saddle. The change in its position had been brought to my attention by his report. I found that the map by Mr. Olds, not by Mr. Wegemann, the field notes and field sheets all indicated that Mr. Wegemann's statement was correct. I went out for the purpose of looking into the correct location of the saddle as suggested by Wegemann, and so far as I went with my investigation I found he was correct.

I had been doing oil geology continuously since 1914. The first six years of my work was practically entirely in the field; thereafter it was between thirty and fifty per cent in the field. The change in the position of the saddle shown by Wegemann's report and my confirmation, was a little less than a mile in my judgment. It moved a little south of the S. E. of 20, to the N. W. of 28. The Dome itself was further south and the changing of the mapping of the saddle left more of the Teapot Reserve north of the saddle than had been
313 originally reported. I had Wegemann's report before me before I went into the field. The paper you hand me I believe to be a true copy of the Wegemann report.

Wegemann Report (Def. Ex. G.) offered as part of cross-examination.

A Report of the Position of the Dividing Line Between the Salt Creek and Teapot Domes.

During the past summer detailed work has been done under the direction of Fisher & Lowrie on the area between the Salt Creek and Teapot Domes in Wyoming. Last month, in company with Mr. T. H. Olds, who did most of the field work, I went over the area in detail and checked Mr. Olds findings.

When the Teapot naval reserve was outlined, I believed that no rock outcrops were to be found between the Southwest quarter of Section 28, Township 39 North, Range 78 West, and the center of Section 20 of the same township. The intervening area is covered by Sagebrush and traversed by

Teapot Creek. At the time the withdrawal was made, therefore, I was in doubt as to the exact position of the saddle between Salt Creek and Teapot Domes and we took the precaution to run the naval reserve far enough north to take in all the possible area in the Teapot Dome.

In the recent examination with Mr. Olds I found in the southeast quarter of the northeast quarter of Section 29, township 39 north, range 78 west, a dip of 2½° to the south. This observation is taken on a thin bed of bentonite which outcrops for several hundred feet along a high-cut bank south of Teapot Creek. The outcrop is of such extent that the correctness of the observation cannot be questioned. In the southwest quarter of the northwest quarter of Section 28, township 39, north, range 78 west, a thin bed of limy shale is present and appears to indicate the exact position of the saddle. It is evident, therefore, that the axis of the saddle lies south of the exposure of bentonite in Section 29, and crosses the northwest quarter of section 28, somewhat south of the center as shown on the accompanying map.

In the northwest quarter of section 33, Township 39 north, range 78 west, a pronounced fault can be traced in a northeast direction across the axis of the Teapot fold. This fault has a displacement of a little more than 250 feet, the downthrow being to the south. Reference to my map published in 1918 in United States Geological Bulletin 670 will show that in the area crossed by this fault I had no observations showing that the beds dipped to the south. The facts which I had before me at the time of drawing the 1918 map could have been explained either by a separate structure on the map or by a pronounced fault. I did not at that time have evidence of the presence of the fault and so adopted the explanation of the separate structure. Mr. Old's work has demonstrated the presence of this fault, and after a careful examination of the area I am positive that it is present. The amount of misplacement can be estimated by tracing certain key beds eroded from the southwest quarter of section 27 where the 'water sand' outcrops to the northeast quarter of section 33 on the north side of the fault. Reference to the map and section accompanying the report of Fisher & Lowrie, submitted herewith, will make this explanation more clear.

From consideration of the above facts, it is obvious that as wells are drilled along the northwest line of the naval re-

serve, part of the oil produced by these wells will be drawn from the naval reserve itself. As the amount of oil in the sand is reduced and the gas pressure also relieved, the water which is present in the sand on the flanks of the structure below the oil will gradually invade the oil sand. It will advance into the lowest part of the structure first. In other words, it will creep into the saddle between the two structures on the northwest quarter of section 28, and the east half of section 29. This invading body of water will gradually work its way entirely across the saddle separating the oil in the south half of section 28 from the oil in the northeast quarter of section 29.

314 The oil in the naval reserves in sections 21, 20 and 29 will gradually be reduced in amount due to the drainage of the wells along the northwest line of the reserve and the presence of the advancing flow of water.

Just what will happen to the oil in the south half of section 28 and the north part of section 33, which will be trapped between the advancing body of water and the great fault in section 33, it is difficult to predict. It is certain that this oil will be subject to a certain amount of migration and loss and that it will be impossible to recover it as satisfactorily after the water had invaded it on the north as it can be recovered now.

The conclusions to be drawn from the foregoing statements may be briefly summarized as follows:

(1) All oil north of the line of the saddle crossing the northwest quarter of Section 28, township 39 north, range 78 west, will be driven toward the main dome of Salt Creek by the advancing body of water in the sand which will advance under hydrostatic head as the oil is drawn from the sand by the wells which will be drilled along the northwest line of the naval reserve and other wells in the main pool.

(2) There is grave danger that the recovery of the body of oil trapped between the advancing body of water and the large fault in section 33 will be greatly interfered with by the advance of the water. The beds are comparatively flat lying and the movements of the oil and water in such beds cannot be predicted. The expense of recovery will be greatly increased due to the uncertainty of the position of the pool and the total recovery of oil will in all probability be decreased by the invasion of the water.

(3) There is no doubt that from the point of development of the property and recovery of oil from it, it will be much better to develop the property as a unit before the invasion of the water. The Navy Department cannot prevent draining the property as outlined above. It can make arrangements for the proper development of the property under conditions which will be mutually advantageous to the Navy Department and the operators.

Respectfully submitted,

CARROLL H. WEGEMANN.

It is stipulated that the Wegemann report was received by the Geological Survey in September, 1921.

315 Redirect Examination.

I determined the position of the saddle between Salt Creek and Teapot Dome and also the danger of drainage of the Teapot Naval Reserve. I had the text of the Wegemann report and the map which accompanied it. I had the maps which had been made by Wegemann when he was with the Geological Survey. I had the maps with me at the time I went to the Salt Creek area. I saw Wegemann personally and got data from him. I got the Fisher and Olds data. I compared these maps to determine in what points they differed. The Case and Olds map differed from the previous map by Wegemann in the position of the saddle. In Wegemann's report he refers to a certain outcropping of bentonite that showed a dip. I went to inspect that. There was no difficulty in inspecting it.

Direct Examination.

Deposition of J. W. ZEVELY, a witness on behalf of plaintiff.

I am and have been for some years of counsel for Harry F. Sinclair and for the Mammoth Oil Company since its organization. About December 31, 1921, I went with Mr. Sinclair to Three Rivers, New Mexico, the home of Mr. Fall, then Secretary of the Interior, on some business connected with the Osage Indian leases. I am not sure that while there the subject of the lease of Teapot Dome was mentioned in my presence, but I think inquiry was made of Secretary Fall as to whether he would lease Teapot Dome. He said he was then having an investigation made out there and upon that report he would probably determine whether or not he would lease

what was known as the Teapot Dome. I think we remained at Three Rivers a couple of days. We left early in January, 1922. After our arrival in the East some time later, around the 1st of February, Mr. Sinclair and I prepared a paper for submission to Secretary Fall. I identify the paper you produce.

Letter, Sinclair to Fall (Pl. Ex. 17) offered.

316

Washington, D. C.,
February 3, 1922

The Secretary of the Interior,
Washington, D. C.

Sir: Being experienced in the production of oil and its manufacture into various by-products, and in its transportation and marketing, my attention has been called to what is known as the Teapot Dome in the State of Wyoming, this area having been reserved by the President for the use of the Navy. I now address you on this subject, as I understand that it has been found necessary by the department to make some contract with reference to naval reserve No. 2, in California, for the reason that said reserve was being drained.

This condition, in my opinion, exists in the Teapot Dome in the Wyoming field. Therefore, I submit for your consideration, as merely tentative, the following bases upon which I would agree to undertake the development of this reserve No. 3.

1. I would want a contract with the Government by the terms of which I would be authorized to take out all of the oil in this reserve without reference to the length of time which might be required to accomplish that end.

2. I will be willing to pay a reasonable royalty, the amount of which will have to be agreed upon by the Government and me. I suggest the graduated scale of royalty, based upon the size of the wells, will be more satisfactory to all parties.

3. It will be my purpose to develop the property as rapidly as conditions will warrant and as circumstances from time to time may demand.

4. I am familiar with the fact that at the present time the transportation facilities are inadequate to handle the present production in the vicinity of this reserve.

5. In the first instance, I will undertake to construct and build sufficient steel storage to take care of the production until such time as it can be determined whether or not the

volume of production is sufficient to warrant the building of a pipe line to connect the Wyoming and other far western fields with the markets of the world.

The building of this storage and the construction of this pipe line, which would be approximately 1,000 miles in length, would require an expenditure of a great many millions of dollars.

6. I will undertake to furnish for the use of the Navy along the Atlantic Coast and the north coast of the Gulf of Mexico fuel oil in exchange for that portion of the oil that may be produced for the Navy in accordance with the terms of the contract. This exchange of oil would involve the necessity of building storage on the Atlantic coast and the northern coast of the Gulf of Mexico, sufficient to take care of the Navy's needs. I would also undertake to supply this steel tank storage.

7. I will further undertake to quiet all outstanding claimants' titles on this reserve No. 3, thereby enabling the Government to make a contract now which will be free from controversy. These claimants have made some development—through themselves or through those under whom they claim—have drilled some wells to the depth to produce some oil, and have expended large sums of money in their development efforts. It is my understanding that existing outstanding claims have as great merit as some of these by reason of which the department has recognized equities and granted rights.

8. I desire to suggest that the leasing of this area by auction would probably result in small areas being awarded to a great many different interests, with the result that the congestion now existing would be much increased. I also suggest for your consideration that you would have from the auction method a multiplicity of accounts and a great number of tenants to deal with which would involve great additional expense.

To justify this large investment for the building of steel tankage for the storage of the excess production, and the large investment required for the construction of pipe
317 line to enable this oil to reach consuming markets, in my opinion this reserve should be contracted to one interest.

9. The recent drilling and discovery of oil in what is known as the Saddle, lying between the naval reserve No. 3 and the

Salt Creek field, is conclusive evidence of the fact that the Teapot Dome is not a sealed dome, and has been and is now being drained.

The plan I propose will insure the Navy against loss of its oil by drainage, and will insure the Navy having its oil in steel storage, above the ground, at such points as will make it at all times instantly available for the Navy's use.

In conclusion, I respectfully suggest that it will be vastly more valuable to the Navy Department to have its oil in secure, steel storage, which does not leak, and which is above ground, and which will be located by the Navy at such points as it may direct, and therefore always instantly available, than to have the oil underground where it is subject to being drained, and perhaps totally lost to the Navy, and far remote from where it could be used.

Very respectfully,

(Signed) H. F. SINCLAIR

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318 I have no knowledge of Mr. Sinclair and Mr. Fall having met or had any negotiations relative to a lease of the Teapot Dome between the time of our leaving Three Rivers to go East and the time of this proposition of February 3rd being submitted. I was not with Mr. Sinclair continuously as counsel during that period. I did assist Mr. Sinclair in preparing that proposition. I do not know where Mr. Sinclair obtained the information with regard to Secretary Fall's requirements, which was the basis of this proposition. I do not recall whether I had any information from Sinclair as to where he got those requirements. I must have had some idea about it from my testimony before the committee, in which I said that the basis of the application must have come from somebody who had information what would be necessary, what would be required.

After the proposition of February 3rd was submitted I was a party to further negotiations with Secretary Fall and they continued until the drafting of a lease which was finally executed in April, 1922. They were usually held at Secretary Fall's office at the Interior Department and usually Mr. Sinclair and I were in them representing Mr. Sinclair. Secretary Fall represented the Government and I think perhaps now and then other persons about his office or connected with his Department were called in there and were present at some

of these negotiations. I cannot give you the names of these others. You asked me whether they were called in for substantial matters or for details and information concerning the oil leasing. It is very difficult to draw a line there about what would be details, what was the substance of the thing. I cannot state that with any definiteness. The drafting of the lease was done mainly in my office, 1315 "F" Street, Washington. When questions came up between the proposed lessees and the government Mr. Sinclair and I, usually dealt with I think Secretary Fall as representing the government. So far as I know, Secretary Fall usually decided questions where there was a controversy about what should or should not be in the lease. As to the mechanics of the lease Mr. G. T. Stanford, I think, had more to do with that than anyone else. He was of counsel for Mr. Sinclair.

319 Cross-Examination.

When I say Mr. Fall made the decision I cannot say whether he made the decision or merely communicated to Mr. Sinclair and me the decision. I have no means of knowing how he reached his conclusions. I do not know with whom he consulted before he made known a decision to Mr. Sinclair and me. I do not mean to say that he necessarily made all of the decisions. As to who he communicated with I think I do know he was in frequent communication with the Bureau of Mines of his Department and with some of the officials of the Navy Department who were familiar with the purposes of the lease. It took several days to draft the lease,—the mechanics of drawing it and agreeing upon the various terms and provisions in it. There was frequent communication back and forth between the government and Sinclair's representatives as to what the lease would be and differences between us as to terms, etc., which required discussion and negotiation. On behalf of the government provisions were desired which Mr. Sinclair objected to and Mr. Sinclair's representatives had suggestions to which the government did not agree and these all had to be ironed out. In other words, it was a mutual negotiation back and forth for, I should think, fully two or three weeks. I could not say that Secretary Fall always decided these matters right at the moment; what he would do, the impression I got was that he had to take time for consultation with other representatives of the government. I knew, as a fact, that he was consulting with the Navy Department during these negotiations. As a rule, after such consultations, when any question or division of opinion between the lessor and lessee arose, Secretary Fall announced practically all de-

cisions. I could not say definitely that it was after consultation, but usually was I think.

Redirect Examination.

Of course, I would not know about consultations of Secretary Fall with others. Usually I did know that a decision was after consultation; but some times I did not. Those differences on which the government and the Sinclair people slipt were, I think, differences as to royalties and prices of exchange and how the payments should be arranged;
320 almost everything in the lease was discussed, I might say, argued about and fought over; everything that was in there. We were trying to get as good a lease as we could for the company and the Secretary was trying to get as good a one as he could for the government. So there were a good many controversies about all the subjects involved.

Telegram, December 22, 1921, Safford to Fall (Pl. Ex. 18) offered.

"If agreeable to you and they can make the trip H. F. Sinclair and J. W. Zevely desire to see you there at the ranch the latter part of next week on a very urgent and important matter."

Telegram, December 23, 1921, Fall to Safford (Pl. Ex. 19) offered.

"Tell Colonel Zevely will be much pleased have Sinclair and himself come to ranch wiring date of arrival that I may not be absent on outlying property."

Telegram, December 23, 1921, Safford to Fall (Pl. Ex. 20) offered.

"Sinclair expects to leave east Thursday and will wire you from Chicago date arrival Three Rivers."

Testimony of L. E. Eddy, a witness called on behalf of plaintiff.

Direct Examination.

I live in San Francisco; am in the employ of Honolulu Consolidated Oil Company. In 1921 and 1922 I was in the General Land Office in charge of the matter of leasing oil lands. My title was Chief of Section.

In the early days of January, 1922, I received instructions from Mr. Safford, over the phone I think; as I remember he wanted to speak with me relative to making or having made a memorandum relative to the claims which had been of record in the Land Office on the Teapot Dome. I had others make the investigation. Safford told me he wanted it as soon as we could make it up and I believe he said the Secretary was in New Mexico at the time, and he would like to have it so that he could give it to him as soon as he returned. Mr. Roy W. Tallman made the actual investigation in my department under my direction and I underwrote the report though he had prepared it. The copy of the report handed to
321 me is correct.

Report of January 12, 1922 (Pl. Ex. 21) offered, not generally, but specially to show the information going to Secretary Fall and not as substantive evidence of the matters therein contained.

322 Department of the Interior

General Land Office

Washington

January 12, 1922.

Address only the
Commissioner of the General Land Office

Memorandum.

Hon. Charles V. Safford,
Administrative Assistant,
Department of the Interior.

Sir:

Complying with informal request from you, I have to state that this office has at hand a number of letters and records of letters relative to the validity of oil placer mining claims in the Wyoming Naval Petroleum Reserve No. 3, the Teapot Oil Dome. There is also a report submitted by former Mineral Surveyor Glenn B. Morgan, under date of July 26, 1917, on the subject, which report I herewith transmit, together with copies of affidavits, which go with the report, and an abstract of title. It will be observed that the facts gathered by Mr. Morgan indicate quite positively that no one has any valid claim of right or title to any of the land in the naval reserve, except to 160 acres in Sec. 16, T. 39 N., R. 78 W., 6th P. M., which belong to "NL" RWT. the state of Wyoming as part of a school section.

The limits of the said naval reserve are given in Petroleum withdrawals and Restorations, Bulletin 625 of the United States Geological Survey, beginning on page 332.

There is nothing of record on the tract books of this office showing the existence at present of applications for mineral patents or of applications for oil and gas permits or leases under the provisions of Sections 18, 18a or 19 of the Act of February 25, 1920 (41 Stat., 437). There is pending an application 028826, Douglas series, filed May 9, 1921, by Neil Beaton for an oil and gas permit under Section 13 of the Act of February 25, 1920, aforesaid, covering the $NE\frac{1}{4}$ $SE\frac{1}{4}$ Sec. 9, T. 38 N., R 78 W., 6th P. M., in the Naval Reserve, but this application has been withdrawn as to said $NE\frac{1}{4}$ $SE\frac{1}{4}$ Sec. 9 and a letter has been prepared in this office by which the application is finally rejected as to said tract. The $SW\frac{1}{4}$ $NW\frac{1}{4}$ Sec. 22, T. 39 N., R. 78 W., 6th P. M. is embraced in an application 028855, Douglas series, for an oil and gas permit under Section 13 of said act, said application having been filed

—2—

"NL" RWT

on May 12, 1921, by Floyd E. Pennell. This application must necessarily be rejected as to said $SW\frac{1}{4}$ $NW\frac{1}{4}$ Sec. 22. There is no alternative.

The only other applications affecting the naval reserve lands in any way are for certain rights of way for pipe lines and for telephone lines, which have all been approved, and two petitions for designation of a few tracts as subject to surface entry under the stock raising homestead act of December 29, 1916.

The Pioneer Oil and Refining Company, probably connected with the Midwest interests, on October 19, 1920, made application to compromise ("X.S 065071) under Section 16a of the Act of February 25, 1920 (41 Stat., 437) as to the $SW\frac{1}{4}$ Sec. 27, $S\frac{1}{2}$ Sec. 28, $SE\frac{1}{4}$ Sec. 29, $N\frac{1}{2}$ and $SE\frac{1}{4}$ Sec. 33, $W\frac{1}{2}$ Sec. 34, T. 39 N., R. 76 W., 6th P. M., and also [illegible] Sec. 33, $NE\frac{1}{4}$ Sec. 4, all Sec. 10, and $W\frac{1}{2}$ Sec. 11, T. 38 N., R. 78 W., 6th P. M. This offer was finally rejected by office letter "DS" of March 16, 1921.

The same corporation on August 23, 1920, filed application for oil and gas leases under Section 18 of the Act of February 25, 1920 (41 Stat., 437), as follows:

—3—

026455, 026456, 026457, 026458, for the NE¼ Sec. 3, NW¼ Sec. 3, NW¼ Sec. 10, and SE¼ Sec. 3, T. 38 N., R. 78 W., 6th P. M., respectively. These applications were all rejected finally and the cases closed by office letters "FS" of March 16, 1921.

In the matters of the offer to compromise and applications for leases, a hearing was held last winter, (December 13, 1920) before former Commissioner Clay Tallman. The then Commissioner allowed the parties in interest time in which to furnish evidence to bolster up the showing made, which showing was weak. No such showing was made.

The alleged discoveries relied upon consisted of four shallow wells and two holes made in connection with assessment work which last holes were about 60 feet deep. The shallow wells were made from about 300 feet to 450 feet deep to the Shannon sandstone only and did not reach the highly productive strata lying far below. These shallow wells are located two on the NW¼ Sec. 3, one on the SE¼ Sec. 3, and on the NW¼ Sec. 10. These wells were tested and each was estimated as capable for producing some oil, 8, 6 19 and 5½ barrels per day respectively.

—4—

"NL" RWT

Oil was pumped from one of the wells, the one on the NW¼ Sec. 10, and stored to the amount of about 100 barrels in a tank nearby. This was all done some years ago. There has been no commercial production from the wells. It appears from the reports and data in this office that none of the oil placer mining locations in the Naval Petroleum Reserve No. 3 aforesaid, are valid, because at the date of the first withdrawals, September 27, 1909, and June 18, 1910, discoveries had not been made thereon, and the claimants or their predecessors in interest were not in diligent prosecution of work leading to discovery of oil or gas. The shallow wells aforesaid were drilled in recent years, long after the withdrawals and abandonment of work leading to discovery of oil or gas. It may be observed that the NW¼ Sec. 10, T. 38 N., R. 78 W., 6th P. M., was not within the withdrawal of September 27, 1909, but was included in a temporary withdrawal made June 18, 1910, and therefore said NW¼ Sec. 10 would not be subject to lease under Section 18 of the Act of February 25, 1920 (41 Stat., 437) in any event.

It may be stated that there are no mineral claims to any of the lands in the said Naval Reserve which deserve serious consideration.

—5—

"NL" RWT

Enclosed herewith is the file of the offer to compromise ("FS" 66507). Attention is called to a letter of February 25, 1921, copy therewith. It seems that the quit claim deed filed in connection with said case was on March 26, 1921, returned to the attorneys of applicant.

Enclosed also herewith are the records of the application 026455-6-7-8, Douglas series. Attention is directed to the fact that Hon. Charles E. Thomas made request on August 11, 1921, for a hearing in the Department relative to the matter of the Pioneer Oil and Refining Company case (M-2672).

Kindly return the report of Mr. Morgan and the pa-
324 pers accompanying same, which are from the files of this office.

From a geological and operating point of view it appears imperative not to open up the Teapot Dome in any manner for the following reasons:

(1) The potential production of the present wells (all flowing) in the Salt Creek has just been tested, and was found to be 85,000 barrels daily.

(2) The present pipeline capacity is about 42,000 barrels.

—5a—

"NL" RWT

(3) The capacity of the logical markets for the Salt Creek crude is possibly 30,000 barrels daily.

(4) The field is about 10% "drilled up" at present.

(5) An intensive drilling campaign of six months could bring the production up to 200,000 barrels daily.

(6) There is no offset well problem in the Teapot Dome.

Very respectfully,

(Sgd.) ROY W. TALLMAN
Special Agent, G. L. O.

Approved:
(Sgd.) L. E. Eddy

325 Deposition of ROY W. TALLMAN, a witness on behalf of Plaintiff.

Direct Examination.

I am Assistant Attorney in the office of the Solicitor of the Department of the Interior. From the Fall of 1921 to March 20, 1922, I was a special agent in the General Land Office under the Commissioner of the General Land Office. I remember a request that I prepare a report with reference to so-called claims on the Teapot Dome. There were two such requests, one was before the 12th of January, 1922. My recollection is that it was in the holidays of 1921, but I am not certain. Pursuant to that request I prepared a report. I identify a copy of it, approved by Mr. Eddy who was at that time Chief of Section, or unit. Charles V. Safford, to whom the report is addressed, was the Administrative Assistant to Secretary Fall. That was the title he had. He was Secretary Fall's confidential man. In the report I referred to a report of Glenn B. Morgan, dated July 26, 1917, and I stated that I transmitted copies of the affidavits which go with it and an abstract of title. That report was on file in the Land Office and was sent with my report to the Secretary's office. Subsequently I had a requets from Mr. Eddy, my chief, on March 9, 1922, to prepare a further report on this same subject. I prepared a memorandum dated March 10, 1922, signed by me and Mr. McFarren, a mineral examiner, and delivered it to Mr. Eddy, who took it to Secretary Fall, or at least he started in that direction and said he was going to. Shortly after that I was summoned over the telephone by Mr. Eddy to Secretary Fall's office to bring there the records of the Pioneer Oil Company's applications for leases for certain lands in Teapot Dome. Those were applications made under the leasing act of February 25, 1920, sections 18 and 18A, as I remember it. I took the records over and Mr. Eddy was then with the Secretary. Mr. Fall looked at the records, at least, looked at the largest one which was the section 18A record, and said, "These are all supposed to be closed out", or words to that effect, and I said, "Yes". He said, "There will be a letter on top of each one of these cases so holding". I said, "Yes". He said, "Where is one here? Find it for me." And he handed me the record and I could not

326 find the letter and Mr. Eddy could not find it. I said, "They are really closed out and dead; all these claims are dead", or something of that sort, and he looked at me with a twinkle in his eye and said, "Well, I am now speaking as a cautious lawyer, and these things might come up and bother the government", shortly after which I left with the

records and left Mr. Eddy there. Mr. McFarren, who was an engineer, assisted me with both reports.

The records of the claims under the leasing act of the Pioneer and Belgo companies were available in the Land Office at that time. The Land Office is a bureau of the Department of the Interior.

Memorandum (Pl. Ex. 22) offered, not generally but specially, to show the information going to Secretary Fall and not as substantive evidence of the matters therein contained.

327 Memorandum on Teapot Naval Reserve.

March 10, 1922.

The Teapot Naval Reserve was examined by us in the Autumn of 1920 in connection with the application made under the oil-leasing Act of February 25, 1920. Only five applications were made in the Reserve and they are the subject of the attached memo. An examination of the entire Salt Creek field was made by us in the latter part of 1920 in connection with the oil-leasing Act. The history of the various titles in the field were investigated. We were present at Washington at the various hearings, both on Salt Creek proper, and on the applications on the Teapot Naval Reserve. No information has come to our attention in the field or otherwise that would indicate that any claim to lands in the Teapot Naval Reserve was asserted otherwise than the five applications referred to. Nor has any development been carried on in the field since 1910 that would be the basis of any claim, except the work done in connection with the above five applications. Every possible source of information on this subject has been examined by us and no claim other than those above mentioned have been found as meriting any equitable consideration.

However, it seems proper to mention that there was drilled in 1911 a well about 600 feet deep located on the NE¼ NE¼ Sec. 34, T. 39 N., R. 17 W., 6th P. M., which was shut down for lack of drilling water. The rig was later moved away in August, 1911 and nothing further was done with the well. This hole was drilled on one of the so-called Shannon locations, made April 28, 1890, title to which passed April 24, 1905, to the Societe Belgo Americane des Petroles du Wyom-

ing. This drilled hole does not seem to warrant any particular consideration.

H. W. MacFARREN
Mineral Examiner, G. L. O.

ROY TALLMAN
Special Agent, G. L. O.

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328 Cross-Examination.

I went out there once to look at the Pioneer Oil Company's lands in the summer or fall of 1920. There had been some shallow wells already drilled on this Pioneer land prior to my visit. I made no investigation before 1920. Any information I would have as to who made the locations I got from this report of another mineral examiner. I never did investigate that thing myself at all. I do not know to the contrary that locations were made later than 1904 and as to other Pioneer locations I do know that they were known as the Shannon locations, made in 1890. I would not want to say that those claims from the date of location had been perpetually possessed and developed up to the time the wells were drilled. I do not know anything about it. I do not know anything to the contrary. I just took another man's say so far as that report was concerned. I never investigated these things at all. I have no knowledge and know nothing about any abandonment between those dates. I remember only one well. I do not know whether any oil came in under it or not. There was a hole there and some oil in a tank. The tank was near the well. I do not know whether the oil came from one of the wells or not. I do not know much about it. I didn't investigate the amount of oil that was actually discovered and taken from there. I was not investigating the cases myself. Mr. McFarren had them and I was along with him as it were. About all I did was to look for survey corner stones, as far as I recall. I do not remember but one hole. There was one that had a rig over it. I think there was another south of it, capped as I recollect, and a little oil in a tank near this one that had a rig over it; probably three feet of oil in a tank of a diameter of twenty-five feet. I didn't know how much oil had been put into it and removed from it. It was right on the same claim with this particular well.

Redirect Examination.

I collected the data from which I made the reports (Pl. Ex. 21 and 22) from the tract book of the General Land Office.

Mr. Morgan's report, and the records of the Pioneer Oil Company cases which contained reports by Mr. McFarren.
329 These records were found in the files of the General Land Office.

Recross Examination.

All my report contained was a compilation from other people's reports and what I found in the records. So far as I am concerned all of that was hearsay, except that I was out there once and what I saw myself. Except as to what I may have reported I saw myself, all the rest would be hearsay. I do not know whether I referred in the report to what I saw myself. I am a member of the bar.

Deposition of ARTHUR W. AMBROSE, a witness on behalf of Plaintiff.

Direct Examination.

I reside at Bartlesville, Oklahoma; am in the oil and gas business; employed by the Empire Gas and Fuel Company; was in the employ of the government for five and one-half years, ending April, 1923; from the autumn of 1921 on I was Chief Petroleum Technologist and Assistant Director, Bureau of Mines, Department of the Interior.

My first knowledge of any proposition to lease the Teapot Dome to the Mammoth Oil Company was early in February, 1922. The Secretary had been discussing the naval reserve question from time to time and had leased to certain oil companies Naval Reserve No. 2, in California, leases on land which they had a preferential right under some statute. One day Mr. Finney and Mr. Bain and I were in the outer office when Mr. Sinclair came out of Secretary Fall's office. Mr. Finney introduced me to Mr. Sinclair at that time, and Mr. Sinclair left the building, left the room, at any rate, and Mr. Finney and Mr. Bain and I went into Secretary Fall's office, and I think, to the best of my recollection, that he read the memorandum that Mr. Sinclair prepared. I refer to the memorandum dated February 3d (Pl. Ex. 17).

At that meeting, or shortly thereafter, the Secretary directed that we give him an estimate of the amount of oil in Naval Reserve No. 3, and some idea as to the possibilities of drainage, and it was in response to that request that I prepared the memorandum dated February 18th. That
330 memorandum was prepared with the assistance of two other engineers of the bureau who were in Washington

at that time. I believe that memorandum went to the Secretary. I identify a copy of it.

Memorandum February 18, 1922 (Pl. Ex. 23, offered, not for the purpose of establishing any substantive fact, but as merely showing a report made to the Secretary
331 officially.

February 18, 1922.

Memorandum:

Referring to the possibilities of drainage of Teapot Dome, Wyoming Naval Reserve No. 3:

The original mapping of the U. S. Geological Survey shows the saddle between the Salt Creek anticline and the Teapot Dome located in the SE¼ of Section 20, T. 39, N., R. 78 W. Revised mapping indicates that this saddle is about three-quarters of a mile to the southeast and located in the SW¼ of Section 28-39/78.

Leases have been granted along the zigzag strip bounding the northwest portion of the Teapot Dome and wells are now producing along a part of this boundary. These wells are located far enough down the dip to indicate that the second Wall Creek Sand may contain oil in the saddle between the two structures. Additional wells that will probably be drilled on some of these leases will be about three-quarters of a mile from the saddle. Any wells drilled in Section 20 and the northwest corner of Section 29, for which sections leases have already been granted, will be located not over two miles from the top of the Teapot Dome.

If the second Wall Creek sand contains oil in the saddle, drilling along the Northwest zigzag boundary on leases referred to above, will result in drainage of the northern portion of the reserve.

If water and not oil is found in the saddle, the effect of producing wells on leases granted along the boundary line may result in a decrease in pressure and hence a smaller production later from the northern portion of the reserve. On the other hand, conditions in the sand may be such that the water in the saddle will serve as a barrier to prevent any appreciable drainage of oil from the Second Wall Creek Sand of Teapot Dome. This condition cannot be definitely predicted until drilling takes place because of such unknown fac-

tors as: (1) The availability of edge water from the east and west and of oil from the north and south of the saddle—influenced principally by any variation of texture and porosity of the second Wall Creek sand: (2) Rate of production of oil from or near the saddle area; (3) whether or not water exists in the bottom of the oil sand in the saddle area; (4) the uniformity of the porosity of the sand.

An estimate indicates that the Salt Creek oil field will produce ultimately 360,270,000 barrels of oil. Up to January 1, 1922, this field has produced 53,139,000 barrels or 14.7% of the oil. Most of this production has taken place since about 1912, or over a period of ten years. The estimate of 360,000,000 barrels does not take account of a third possible sand which is believed to exist and which if it does exist should raise the total production of Salt Creek to perhaps 500,000,000 barrels or more. A rough estimate of Teapot Dome indicates that this structure should produce 135,000,000 barrels of oil. This estimate also does not take account of a possible sand below the second Wall Creek. It is reasonable to believe therefore that those two fields will have a total production of perhaps 600,000,000 barrels of which only 53,000,000 barrels or less than 9% has been removed in the ten years. This leaves over 90% to be recovered.

Estimated on Ultimate Production of Known Sands of Salt Creek Oil Field and Teapot Dome, Wyoming.

Salt Creek Oil Field, Wyoming.*

First Wall Creek Sand 4509 acres at 30,000 bbls. per acre	135,270,000 bbl.
Second Wall Creek Sand, 15,000 acres at 15,000 bbls. per acre (average	225,000,000 "
Total Ultimate Production	360,270,000 "

332 (Note—Second Wall Creek sand has about 5000 acres of perhaps 25,000 bbls. per acre while remaining 10,000 acres grades to edge with about 5000 bbls. per acre. This average 15,000 acres at 15,000 bbls. per acre.)

Teapot Dome, Wyoming*

First Wall Creek Sand—2500 acres at 20,000—bbls.	50,000,000
Second Wall Creek Sand 5670 acres at 15,000—bbls.	85,050,000
*Total ultimate	135,050,000

*Does not account for possible Lakota Sand.

Salt Creek Production to January 1, 1922, was 53,139,000 bbls.

Attention is called to the fact that these rough estimates exceed those of the U. S. Geological Survey.

In conclusion it is believed that if oil is found in the saddle in the Second Wall Creek Sand, the leases which have been granted along the northern zigzag boundary separating the two structures will result in drainage of this sand in the Teapot Dome during the next six or seven years to a point on the south section line of Section 28, T. 39 W., R. 78 W., and if conditions are favorable the productivity of the sand will be affected even farther to the south.

(Signed) A. W. Ambrose."

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333 I can't know the exact date when I did any further work towards the proposed lease, but about the date of that memorandum, as near as I can recall. The Secretary asked that a rough draft be prepared. This was in Secretary Fall's office and Mr. Sinclair, Mr. Zevely and Mr. Fall were present. I am not an attorney. The Secretary outlined certain terms that he wanted in the contract and asked that a rough draft of the lease be prepared, embodying those terms, for his consideration. Those who worked upon the rough draft were Secretary Fall, Mr. Sinclair, Mr. Zevely, Mr. Stanford; Mr. Eddy of the General Land Office worked on parts of it. I had a bunch of these people in the bureau to check my computations and things like that. Mr. Watts worked on it and I worked on it. At first we worked in a little office adjoining Secretary Fall's office; the second day we went to another office in the Interior Building. After that we worked at Mr. Zevely's office and occasionally in Mr. Fall's office. Secretary Fall wrote or dictated the preamble and inserted something in the contract in respect to the common carrier and he changed the [verbeage] of the oil certificate. He made several changes in the contract I don't just recall off hand. We continued to draft and redraft for a month or six weeks. I do not know that the draft was submitted to any attorney or lawyer in the Department or whether any attorney or lawyer in the Department aided in drafting the lease. The parts which were submitted to Mr. Eddy were those parts referring to rights of way, surrender at termination, and things like that. Those are the formal parts towards the end of the actual lease. I remember some

such memorandum as Plaintiff's Exhibit 7B being sent out. My impression was that it was confidential, as all Navy matters were. I so treated it. I don't remember the exact wording of it. I made a trip to Three Rivers just after Secretary Fall left on April 13th. I went several days after he left and saw him at Three Rivers. The question was brought up about the first part of the lease, about how it was drawn up, whether it was to be executed by the Secretary of the Interior and the Secretary of the Navy. I believe he stated he felt that it should be signed by the Secretary of the Navy. I heard of a proffer from Mr. Beatty of the Texas Company for a lease on Teapot Dome. That is the only one I
334 heard of.

I believe I was present when Secretary Fall signed the lease in the office adjoining his main office. Mr. Sinclair and Mr. Zevely were there. I don't know about Mr. Stanford. No other government official was there. I think Mr. Sinclair signed then, but am not sure. I was not present when any other government official executed the lease.

Cross-Examination.

As to any other persons who were present when I was assisting and preparing the lease and making computations, I talked with Dr. Bain about it when the lease was almost in final form and he made a couple of suggestions. He saw the draft. I tried to keep Bain informed as I went along, because he was my superior, but he could not give his undivided attention to it, because he was absorbed in looking after other leases, the Pan American, and I casually talked about it on one or two occasions to Secretary Finney. I cannot recall any suggestions he made except he hoped we would get a very good royalty. Mr. Watts and I figured the computations relative to fuel oil and Mid-Continent crude oil in long hand and I took them back to the Department and had them checked two or three times by different people there. I think there were three who worked on them. One of them was F. W. Lane; another was Mr. H. B. Hill.

I would not say that Secretary Fall permitted me to do other than work up the rough draft and furnish him the information, and we worked it up, and then he would make the decision on the terms. I performed such duty with reference to a good many oil leases. I was familiar with that kind of work and that was probably the reason why I was asked to prepare the rough draft. I had worked on a good many government leases prior to this time. In the four years I

was with the Department I had worked under Secretaries Payne and Fall in this sort of work. I never had the authority to settle the terms of a lease. The general provisions of the lease giving the terms were fixed by the proposer, Mr. Sinclair, and the acceptance, whatever it was, of those terms, whoever made them; but I was to prepare the other matters in the lease as I usually did.

As far as I recall it I didn't receive any explicit instructions from the Secretary as to secrecy. There might
335 have been such, but I cannot recall any. I understood all naval matters were generally secret, and that is the only reason I recall for treating the matter as confidential.

I was sent to Three Rivers about the Doheny lease, but the Sinclair lease was discussed down there, but I believe it had already been signed. I believe the discussion was as to the advisability of the Secretary of the Navy signing it. I believe there was some legal question involved in that. I did not go down there expressly to discuss the contract of Mr. Sinclair, of the Mammoth Oil Company. I went there for the express purpose of discussing with Secretary Fall regarding the Doheny contract of April 25, and it was very natural in discussing the whole Naval Reserve situation that I would discuss all the leases involved. The Sinclair lease had in fact already been executed. All that took place down there at Three Rivers was after this Teapot Dome lease had been executed. I saw Secretary Fall sign it April 7.

I don't know when Secretary Denby signed the lease. I was at Three Rivers shortly before April 25th. Secretary Finney sent me down to take the Pan American lease and show it to Secretary Fall and explain the provisions which he was agreeable to and ask the Secretary if it met with his approval. I had no other mission. I think it was April 23d.

Admiral Robison was present at one conference in consultation about the lease or preparing its terms, and Admiral Gregory was present at consultations. Admiral Robison made some changes in the lease. He didn't make very many. I think Admiral Robison was in consultation with Secretary Fall during the five or six weeks the lease was under contemplation. I do not know how frequently. I could not fix the day and time when he was in consultation with Secretary Fall, but he seemed to know what was in the lease.

Redirect Examination

Oil leases on the public lands generally, under the usual routine, were prepared at the General Land Office. The

Land Office would draw the lease and I wold supply the technical knowledge to them of oil matters which were to go in the leases. The General Land Office usually prepared
336 the leases on the public lands that were put up for competitive bidding and they were routed through the Bureau of Mines for checking, analysis, drilling contracts, etc. The Naval Reserve leases on Reserve No. 2 Secretary Fall had the Bureau of Mines draw up because the questions involved were very largely technical, that is, the drilling program and things of that sort: whereas the Land Office part of the lease was routine, so he asked that the same things be done in Naval Reserves Nos. 1, 2 and 3, because there were exchange provisions and other things which were tech-
337 nical. Those were the only ones to my knowledge which had such exchange features in them and there were two of them.

Telegram Fall to Safford (Pl. Ex. 24) offered.

Chicago Ills Jan 26 1922

Charles V Safford
Interior Dept Washington DC

Leaving here on Pennsylvania number twenty two arriving eight five Friday morning Mark Thompson with me

FALL.
Secty

Telegram Fall to Safford (Pl. Ex. 25) offered.

ElPaso Texas Jan 24 1922

Charles V Safford
Interior Washington D C

Leaving today

FALL.
Secretary

Letter Sinclair to Fall (Pl. Ex. 26) offered.

H. F. Sinclair New York March 11, 1922.
45 Nassau Street

To the Honorable,
The Secretary of the Interior.
Sir:

The Mammoth Oil Company has this date made application for an oil and gas lease covering that part of the public

lands of the United States designated in Executive Order of withdrawal issued by the President of the United States on April 30, 1915, creating Naval Petroleum Reserve No. 3, Wyoming No. 1, involving 9,321 acres, more or less, situated in Natrona County, State of Wyoming, and more fully described in said application.

In the event said application is granted and a contract of lease is made between the United States and the Mammoth Oil Company covering said lands, I will become the owner of all the capital stock of said Mammoth Oil Company.

In consideration of the United States granting said application and making a contract of lease with the Mammoth Oil Company, I hereby personally guarantee the performance on the part of said Mammoth Oil Company of all its obligations under said contract of lease.

338 This guaranty shall become effective upon delivery to Mammoth Oil Company by the United States of said contract of lease.

Respectfully,

H. F. SINCLAIR.

Application for Lease by Mammoth Oil Company (Pl. Ex. 27) offered.

339 Application for Lease.

Washington, D. C., March 11, 1922.

To the Honorable, the Secretary of the Interior:

Now comes the undersigned Mammoth Oil Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office in the State of Delaware at Wilmington, Delaware, and hereby respectfully makes application for an Oil and Gas Lease covering that part of the public lands of the United States designated in Executive Order of Withdrawal issued by the President of the United States on April 30, 1915, creating Naval Petroleum Reserve No. 3, Wyoming No. 1, involving 9,321 acres more or less, situated in Natrona County, State of Wyoming, and described as follows, to-wit:

(Here the lands are described)

The undersigned requests that such lease be granted under form of Contract of lease which is herewith submitted in triplicate with this application.

The undersigned herewith tenders and files a quitclaim deed executed by it, quit-claiming and relinquishing to the Government of the United States all of its rights, title and interest claimed or possessed in or to any and all of the lands in this instrument described.

Two certified copies of the Certificate of Incorporation of the Corporation are filed herewith, and there is also attached hereto certified copy of the resolutions of the Board of Directors, authorizing the proper officers of this corporation to negotiate for, execute and deliver such lease, if the same be granted, and to furnish such bond in connection therewith as may be required upon the granting thereof by the Government of the United States.

Respectfully submitted,

(Seal of Mammoth Oil Company) MAMMOTH OIL COMPANY
By H. F. Sinclair, President.

Attest: N. D. Parham,
Assistant Secretary.

Approved: Albert B. Fall, Secy.

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340 Quit Claim Deed, dated March 10, 1922, Societe Belgo Americaine Des Petroles Du Wyoming of Wyoming to Mammoth Oil Company, reciting a consideration of $10, and other good and valuable considerations, quit-claiming all right, title and interest of the grantor in the lands therein described in Naval Reserve No. 3 (Pl. Ex. 28) offered.

Quit Claim Deed, dated March 10, 1922, Pioneer Oil and Refining Company to Mammoth Oil Company, same consideration, quit claiming all right, title and interest of grantor to certain lands in Naval Reserve No. 3 (Pl. Ex. 29) offered.

Quit Claim Deed, dated March 11, 1922, Mammoth Oil Company to United States of America, consideration $1 and other good and valuable considerations, covering all right, title and interest of grantor in same lands covered by two preceding quit claim deeds (Pl. Ex. 31) offered.

Deposition of GEORGE K. THOMAS, a witness on behalf of plaintiff.

Direct Examination.

I reside at Denver, Colorado, am an attorney at law, and Secretary and Attorney of the Pioneer Oil and Refining Com-

pany. The Midwest Oil Company was the company which advanced the costs of filing and keeping the old class of claim titles which the Pioneer Oil Company had in Salt Creek, to keep them alive and the connection between the two was based upon those advances. The Midwest is not the owner of the stock, but it is held in trust more for the Midwest as the chief beneficiary, and such other members of that company as were originally interested in the field.

341 The Pioneer Company made efforts to secure a lease or leases on Teapot Dome. The applications were in writing addressed to the Department of the Interior. No written application was ever made under the act of June 4, 1920. I was present at negotiations with Mr. E. L. Doheny, or members of his organization touching a joint application for a lease by the Pioneer and Mr. Doheny on the Teapot Dome. These negotiations in New York City did not eventuate in any agreement or contract between Doheny and the Pioneer. They were in December, 1920.

From January to March, 1922, I was engaged in the preparation of data looking towards a proposal to be made either in the name of the Pioneer, or some other company, for a lease upon the Teapot Dome field. I left Denver about March 6th, and arrived in Washington about March 8th. No application was in fact made pursuant to the data I had gathered. A contract was executed between Mammoth Oil Company on the one side and Pioneer and Belgo on the other, which I produce.

Agreement of March 11, 1922, Mammoth Oil Company and Belgo and Pioneer companies (Pl E. 32) offered.

342 Memorandum of Agreement made this eleventh day of March, A. D. 1922, between Mammoth Oil Company a Delaware corporation of the first part hereinafter called The Mammoth Company and Societe Belgo-Americaine des Petroles de Wyoming, a corporation of Wyoming and The Pioneer Oil and Refining Company, a corporation of the State of Wyoming, of the second part hereinafter called The Belgo and the Pioneer Companies respectively.

In consideration of the agreement of The Belgo and Pioneer Companies to relinquish all their claims in and to any and all of the tracts of land located in U. S. Naval Reserve #3 known as the Teapot Oil Field, being the lands described in Executive Order of Withdrawal executed by the President of the United States on April 30, 1915, creating Naval Petro-

leum Reserve #3 Wyoming #1, in Natrona County, Wyoming and comprising 9,321 acres more or less, and of their agreement to quitclaim all of the right, title and interest of every kind or nature, claimed or held by either of them in and to said lands or any part thereof, the Mammoth Company agrees, in the event it shall secure a lease upon said lands, or a part thereof, to pay to the Belgo and Pioneer Companies jointly the sum of Two Hundred Thousand Dollars ($200,000) in Eighteen (18) months from date hereof, the same to be evidenced by its promissory note for said amount bearing interest from date at the rate of six per cent (6%) per annum to be delivered within twenty (20) days after the execution of said lease or leases; and to pay to the Belgo and Pioneer Companies the value (at the price received for said oil by the Mammoth Company) of one-third of the gross production of oil after deducting government royalty from the total production; sold from said lands until the amount so paid in addition to the note hereinabove referred to shall aggregate Eight Hundred Thousand Dollars ($800,000). Payment on account of production shall be made on the 20th day of each month for production sold during the preceding month.

In Witness Whereof the parties hereto have caused their corporate names to be subscribed hereto and their corporate seals to be hereunto affixed by their corporate officers thereunto duly authorized, the day and the year first herein written.

(Seal) MAMMOTH OIL COMPANY
By G. D. Wahlberg,
Vice-President, First Party.

Attest:
H. W. Kenwell, Secretary.

(Seal) SOCIETE BELGO AMERICAINE
des PETROLES du WYOMING
By C. W. Burdick, President.

Attest:
Lansing E. Rowland,
Assistant Secretary.

(Seal) THE PIONEER OIL AND
REFINING CO.
By John L. McCague,
President Second parties.

Attest:
George B. Thomas, Secretary.

343 By direction of Mr. L. L. Aitken I prepared the data in question and at Mr. Aitken's direction I went to Washington. I was not personally present at any negotiations leading up to the contract which I have produced, that is, negotiations with the other party to the contract, or anyone representing the other party.

The quit claim deeds (Pl. Ex. 28 and 29) were executed and delivered in Washington at that time. The agreement was sent around to be executed and was not completely executed on that date.

Upon the note mentioned in the agreement there has been paid $50,000 in principal, plus interest, and approximately $150,000 has been paid in oil. The Pioneer Company was willing to build a pipe line if it could obtain a lease on the Teapot Dome upon the terms of its proposed bid; the proposed bid was never submitted. I was ordered to abandon the work I had been doing, the reason given me being that the bid could not be made high enough as a business proposition to meet another bid which was then made.

Cross-Examination.

The bid my company was prepared to make was less favorable to the government than the bid which was made by the Mammoth Oil Company. My company was not willing to make as favorable a bid as the bid which was made by Mr. Sinclair. I learned that fact when I got to Washington; that was the reason why our bid was not put in. The quit claim deeds given by Belgo and Pioneer companies were made in the same way that the Mammoth Company made its quit claim deed to the government, to be returned in case not used, and our contract with the Mammoth Oil Company and the conveyance of title to the Mammoth Oil Company was to be conditional, the condition being that if they did not get contracts with the government then these were to be returned to the companies. The reason for making the contract with Mammoth was that Mammoth's bid was more favorable than the one we were prepared to make.

The payments received under the Mammoth agreement (Pl. Ex. 32), have been made in accordance with the terms of the contract.

344 Deposition of AMOS L. BEATY, a witness on behalf of Plaintiff.

Direct Examination.

I live in New York City, am President of the Texas Company, an oil company producing, refining and marketing its product, with a capital of $164,450,000, operating in the United States and foreign countries.

I saw Secretary Fall in the spring of 1922, an appointment being made at my request. I produce a copy of the telegram requesting the appointment.

Telegram, Beaty to Fall (Pl. Ex. 33) offered.

New York, March 29, 1922.

Hon. A. B. Fall
Secretary of the Interior,
Washington, D. C.

"Can I see you at your office Friday 31st at three o'clock?

AMOS L. BEATY

I produce the reply.

Telegram, Fall to Beaty (Pl. Ex. 34) offered.

Washington DC 601P 29
1922 Mar 29 PM 6 11

A. L. Beaty
The Texas Company New York NY

I will be here at three o'clock Friday and glad to see you.

FALL Secretary

Pursuant to this telegram I saw Secretary Fall about three o'clock on March 31st. Our conversation was with reference to a lease on what was known as Teapot Dome. I indicated to the Secretary that my company would like to consider the taking of a lease for the development of Teapot Dome; that we understood it was to be leased, and I wanted to talk with him about it. He stated that he did have under consideration the leasing of the Dome. He stated that he had a proposition from Mr. Sinclair, a proposition which was satisfactory, but nevertheless he would be glad to have my company submit a

proposition also. I stated to him what my company would be willing to do, without putting it in the form of a written proposition, letter, or anything of the kind. I did that
345 because I realized that the preparation of a formal offer would involve a great many details and have to be carefully worked out, and my thought was to state the substance of what I would be willing to propose, and get the Secretary's reaction on it and determine in that way whether it was worth while to go to the trouble of submitting a written offer. I proposed to pay royalties as follows: on wells producing up to 20 barrels a day 12½%; on wells producing from 20 to 50 barrels a day 16⅔%; on wells producing from 50 to 100 barrels a day 20%; on wells producing from 100 to 500 barrels per day 25%; on wells producing over 500 barrels a day 40%; this royalty being in kind to be satisfied by exchange of Navy fuel oil at Atlantic and Gulf ports, where exchange was to be made at Port Arthur, which is on the Gulf where our largest refinery is, the basis to be 1¼ barrels of fuel oil for a barrel of royalty oil. On points between Port Arthur and Norfolk, our terminals between those points 1⅓ barrels of fuel oil for a barrel of royalty oil, and at Norfolk, and terminals north of Norfolk, barrel for barrel. I think no other kind of payment was discussed then, but exchange of fuel oil for royalty oil. Mr. Fall did say something in that conference about getting fuel oil on the Pacific Coast; my company was not in a position to make deliveries of fuel oil on the Pacific Coast; and that was not considered further in connection with the lease or anything. I think I said to him that we could not so deliver on the Pacific Coast; I am sure I did in a communication after that, in connection with another matter. I am quite certain that I told him that in this conference.

Mr. Fall stated that there were outstanding claims on the Teapot Dome and that it would be his policy in leasing the Dome to require, if possible, that these outstanding claims be satisfied; that he had ruled in other cases, or in some other case and that the company acquiring and taking care of outstanding claims would naturally be given preference treatment. He stated that Mr. Sinclair had acquired conveyances of the claims in question affecting the Dome, and that he then had the conveyance or conveyances in his possession. I had heard something about those claims and had the impression that they had not been delivered irrevocably but that if my company should obtain a lease, it could acquire those
346 claims and I stated that to the Secretary. I told him that I had that impression and that information, and

that I did not know whether it was correct or not, but it might be possible if the title had not vested under those conveyances, quit claims, or whatever they were. In other words, if they were delivered conditionally upon Sinclair getting a lease that it might be possible for my company to meet that condition—I did not know—I could not determine. He did not say anything pro or con on that subject. He said something about the price, that Sinclair was reputed to have paid, the amount of which I do not now recall. I remember that he stated that he had asked Mr. Sinclair about the price, and that Sinclair had told him what it was, but I would not be certain now as to the amount he stated, whether it was a million dollars or some other amount, I don't remember—I couldn't state for certain what it was—I don't remember.

As a result of the conferences, I decided that I would not follow up the negotiations for a lease, that if the Secretary cared to follow it up in view of what I said, we would then go into it seriously, but I had the impression that that would not occur, and it didn't occur. The conversation shifted to another oil proposition in connection with government oil. The Secretary indicated a desire that my company become interested in operations in that section. We discussed the plan that I had in mind, the building of a refinery at Casper, and connecting that refinery with the Salt Creek Field by a pipe line, which seemed to appeal to him, and he said that the Government had some royalty oil at Salt Creek, which is near Teapot Dome. It was a separate matter from the lease at Teapot Dome and he stated we might work out an exchange along some line similar to the plan that I had suggested for paying for the royalty oil in fuel oil, that is, a sale to my company of the royalty oil which was accruing to the Government at Salt Creek, payment to be made in fuel oil. I made him the same proposition tentatively, of exchanging fuel oil for Salt Creek royalty oil, that I had made him in reference to paying for royalty oil under the Teapot lease we had discussed, the exchange to be at the same point and at the same ratio. No conclusion was reached. I was
347 leaving the same afternoon for Asheville, N. C., to be gone about two weeks, and the Secretary took the matter under consideration. I received a telegram from the Secretary at Asheville, which I produce.

Telegram, Fall to Beaty (Pl. Ex. 35) offered.

Washington D C 6:48 PM April 4, 1922

Mr. A. L. Beaty,
Grove Park Inn Asheville N C

Referring royalty oils now producing over one hundred and fifty thousand barrels monthly from and to what point would pipe line be constructed stop in basis exchange crude for fuel one barrel one and one eighth barrel and one and one fourth barrel navy specified bunker A fuel oil or shipping board sea going fuel oil stop could you exchange deliveries Pacific Coast if not direct through agreement with Associated or Pacific or other companies there if so what basis exchange each class oil.

"FALL, Secretary."

I replied, and produce my reply.

Telegram, Beaty to Fall (Pl. Ex. 36) offered.

Asheville N C April 5 1922

Hon. A. B. Fall
Secretary of the Interior
Washington D C

Yours fourth Line would be from Salt Creek to Casper or Glenrock at which point would build refinery Stop My suggestion referred to Navy specifications Stop We have no available Pacific Coast facilities or supply but will see what can be done through parties you mention upon my return to New York ten days hence.

AMOS L. BEATY.

I produce Fall's reply.

348 Telegram, Fall to Beaty (Pl. Ex. 37) offered.

1922 Apr 5 PM 1 05 Washington DC 1235 P 5

Judge Amos L. Beatty
Grove Park Inn Asheville N Car

My question was referring to naval specification bunker A oil they have three specifications Bunker A Bunker B and Bunker C Bunker B is the specification for transport oil no longer used market price difference today between Bunker A which is the naval specification for their prime purposes and

Bunker C of which they use very little which is a very heavy oil is approximately sixty cents per barrel my telegram asked if your proposition based on Bunker A the highest price navy oil being about sixty cents higher than Bunker C and Bunker B ranging between the two extremes kindly confirm immediately whether you mean navy specification Bunker A fuel oil.

FALL, Secretary.

I replied on the 5th, and produce my reply.

Telegram, Beaty to Fall (Pl. Ex. 38) offered.

Asheville, N. C. April 6, 1922.

Hon. A. B. Fall
Secretary of Interior
Washington, D. C.

Yours 5th. I meant Navy specification Bunker A in connection with lease proposition being willing to go that far in order to obtain lease on royalty basis and other terms outlined or to be agreed upon and am still willing to do so Stop The matter of purchasing royalty oil is somewhat different and upon reflection I believe that my tentative proposition though contemplating Navy specification Bunker A was too liberal and it is withdrawn with request that I be permitted to substitute Bunker C or else decrease the ratio of
349 fuel oil by one fifth Stop In each of the two proposed agreements there are many details and other features to be considered and I will greatly appreciate if matters can remain in statu quo until my return to New York one week hence.

(Sgd.) AMOS L. BEATY.

That last telegram refers to both propositions I discussed with the Secretary. The first sentence, as it shows, is with regard to the Teapot Dome lease, and the balance with regard to the exchange of Salt Creek royalty oil.

I got no further telegram or letter from the Secretary at that time or for some time thereafter. I never received any further communication from him touching a possible lease of Teapot Dome. All further communications I had with him were about Salt Creek royalty oil.

I first learned of the actual fact of the leasing of Teapot Dome to Mr. Sinclair's company shortly after the date of the

last telegram. I cannot give the exact date. I learned it either from the newspapers or from the New York office of the Texas Company; I do not recall which. I had gotten some information before I originally wired Secretary Fall to the effect that there would be or might be a lease of the Teapot Dome; my recollection is that I got it from the Chairman of our Board. He got it from some source. I know I sent Mr. Connelly, one of our men, down to Washington to talk to the Secretary about it a few days before I made this appointment, in order to confirm the fact that a lease of Teapot Dome was under consideration. I cannot recall whether the Secretary in our interview stated anything to me touching the condition or requirement of the construction of a pipe line as a condition to the leasing of Teapot Dome. I am quite sure that he did not state that he expected me to submit anything of that kind in connection with my proposition if I submitted one.

Cross-Examination.

I can only estimate how long before my interview I first learned that Teapot Dome was to be leased. I should
350 say it was ten days or two weeks. That is my best recollection. I understood that in case we were to have a lease we would protect against drainage from other wells on adjoining properties. I understood the requirement would be the obtaining of the outstanding claims from anyone who took the lease. I do not think I had definite information that the deeds to Mr. Sinclair were conditional in character and would not be approved unless the lease was finally granted to Mr. Sinclair; it was perhaps no more than an intimation; I would rather say an intimation than information. I cannot now say whence that intimation came. I think it did not come directly to me from outside sources, but it came to me from Mr. Lufkin, Chairman of our Board.

I would not say that the Secretary stated to me that these existing claims in the Teapot Dome in favor of other parties would have to be taken care of by the lessee; but his statement on that was that that was contemplated, and as I recall it, that the companies making an offer which included that kind of an arrangement, would be given preference consideration. I did not get the idea that that was the sine que non. It might or might not be, I couldn't tell. The picture that I got from the Secretary was that they were to deal with these claims, if that could be done reasonably, and those who

did so deal would have the preference in the lease, or some intimation to that effect.

My offer for the lease included the proposition that the royalties we allowed to the government were to be retained by us and paid for rather than delivered to the government in kind—paid for by the delivery of fuel oil; and that our royalties would be delivered at our own terminals, of which we have 5 or 6 on the Atlantic Coast. Our offer to deliver fuel oil was with reference entirely to our own terminals.

My original offer contemplated the delivery of Bunker A fuel oil in exchange for the crude that we were to obtain from the royalties; this fuel oil was to be delivered at the basis of exchange, the highest ratio being a barrel and a quarter of fuel oil for a barrel of royalty oil, and the lowest barrel for barrel. That contemplated any fuel oil meeting the specifications. No difference is observed between Bunker A, Southern Fuel A and Bunker A Mid-Continent. We do not pay any attention in fuel oil to the origin of the crude; the specifications never so provide, but cover the matter of flash
351 test, viscosity, sulphur content, and other matters, regardless of the origin of the crude. There is no difference between the price paid for strictly Mid-Continent and Southern fuel oil when it reaches the same market and provided the specifications are met. If it is sold in the local market there may be a difference in the market price, but if it reaches the same market and meets the same specifications it brings the same price. The difference varies in the local market. It depends both on supply and demand, local conditions and transportation. You might transport Mid-Continent fuel oil to a coast market and take the freight into consideration and then get some competition with the other oils, but you can see that would put Mid-Continent fuel oil at a disadvantage, so the result is that it is usually marketed in the Mid-Continent. The crude oils have a difference over Southern in the local price; at times it is substantial, at other times it is slight, depending on the demand for the kinds of oil.

I offered no bonus in connection with my offer for the lease. I had discussed the offer with some of my official associates in the Company, it had not been submitted to the Board of Directors. It was an offer that would have been carried out. It had been discussed to the extent that I felt I was fully authorized to submit it. My recollection is it had been discussed in the executive committee. I know it had been dis-

cussed with the various members of the Executive Committee, so that I was sure of my ground. I told Mr. Fall exactly what my company would be willing to do, barring the details.

I cannot tell you how I happened to get information that the lease was contemplated. I don't recall any general discussion among those with whom I was mingling to the effect that there was to be a lease. I think it was pretty well known to the oil companies that were in a position to handle a deal of that kind that a lease was under consideration, but it would be difficult for me to tell you just how I got that impression.

I saw no indication of any secrecy. I think it was generally understood by the oil men, those carrying on major operations, that that was under consideration. My present recollection is that I got information from the West, our
352 Denver office, and that it came to me here in New York, and I discovered no evidence of secrecy. I have stated the only dealings that I had with the Government or with the Secretary of the Interior. I discovered no evidence there of secrecy. There was no intimation made to me that the talk I had with the Secretary was confidential or that I was not to divulge anything in relation to the business. There was nothing of that kind.

Redirect Examination

Nothing was said to me by Secretary Fall relative to the construction of storage at various points for the Navy's use. Nothing was said that I can recall of an alternative whereby the government might desire cash rather than fuel oil in exchange. No statement was made by the Secretary to me that this was in any wise a miltary secret or something connected with the defense plans of the United States, and therefore not to be divulged by me.

Deposition of FRANK E. KISTLER, a witness on behalf of Plaintiff.

Direct Examination.

I reside in Denver. Until November 7, 1921, I was President of the Producers and Refiners Corporation, and since then have been Chairman of the Board. That company is incorporated in Wyoming with a capital of something over $50,000,000, par value; it is engaged in practically all branches of the oil industry, leasing, producing, transporting, refining and marketing petroleum and its products. In the month of March, 1922, I called upon Assistant Secretary

Finney at the Interior Department in Washington. I stated the purpose of the call was to discuss the matter of leasing the Teapot Dome from the government. He stated there was no need of wasting time with him because that matter was in the hands of the Secretary and I would have to talk to Mr. Fall about the matter. I made an appointment with the Secretary and subsequently saw him at his office. I discussed the matter of leasing Teapot Dome reserve with him. I told him that I supposed most every company out west was anxious to lease that land, and I had a scheme I wanted to present to him. I first told him something about our company, then stated that we were very anxious to get a part of these lands, that we did not want to be hoggish about it—using the exact terms I stated there—and would be satisfied to
353 lease only part of the structures. I had a geological map with me, showing that there were two supposed structures instead of only the Teapot Dome. One was called the "Saddle Rock Dome", and the other the "Teapot Dome". I proposed to lease 640 acres on each of those two structures on a quarter royalty,—twenty five per cent royalty; in the event we secured these leases we would drill a well on each of the 640 acre pieces, to a depth of 3500 feet, or to such depth as would be necessary to test the underlying sands. I undertook to show the reason for leasing these lands that way. My principal reason was—as stated to him—that I thought we could not get all of the land. This was simply a matter of opinion—I had thought over the matter—and therefore took this course of procedure. I didn't just state that to him. I probably did not go into those details. I stated that we would be satisfied with part of the land. I did not know what other people were doing, what their plans were, but I assumed that they were all trying to lease as much of the land as they could. He said he was not ready to consider leasing the Teapot Dome Naval Reserve at that time, and could not consider my proposition. He said he would notify me and give me a fair and equitable chance to bid on it if he did decide to lease. I offered to file a written application. He said he was not ready to receive any applications.

I recommended to him that after the first well was drilled on each structure that the government should cut it up in quarter sections and sell it to the highest bidders. He said that he didn't know what decision he would arrive at, or what he would decide to do about it, but whatever he did decide to do he would let me know. I don't know just what he did say about leasing the whole structure at that time. I don't think he did say anything about the whole.

There was no discussion about existing placer mining locations, nor was anything said by him or by me relating to a possible pipe line or about building tank storage for the oil. I fix the time of my interview with the Secretary thus—I was in New York in March and went down to Washington on this matter. I kept no memorandum of the day I was in Washington, but I returned to New York, having some business there, remained two or three weeks, and while there the announcement came out about the leasing of the Teapot Dome, I mean the announcement that it had been leased to Mr. Sinclair. I think my visit was some time during the latter part of March.

From my knowledge of oil leasing in the Salt Creek field and elsewhere, in the case of government lands, it is a difficult problem for me to decide whether it was good policy for the government to lease all in one piece, or to lease by competitive bidding in smaller lots, from the point of view of the lessor anxious to obtain the best results; it would be a matter of opinion. There are cases where it is best to have large blocks leased; of course it is always advantageous to the operator; but there may be cases where it would be advantageous in regard to royalty to have it cut up in smaller lots. It would depend upon the prices during the period of flush production. If prices were low and the oil flushed out in a hurry, the lessor would suffer a loss. The lessor would suffer a loss as well as the lessee. If prices were high they would make profits as in any other business.

My company was considering making a bid upon the Teapot Dome structure if it had been put up for public bidding. It was then familiar with the Salt Creek field and all those operating in this district were also. It is a matter of opinion what was then the belief with regard to the prospective value of Teapot Dome as compared with the Salt Creek field. We often get very enthusiastic over leases and prospects and no man in the world knew what was under this land—the Teapot Dome. As to location it compared favorably with that of Salt Creek; naturally it was very attractive to all operators in the West. In reply to your request as to what the general opinion was amongst oil operators out here as to the prospective value, I can give you my opinion and the other will be based on rumors. I don't know positively what the opinion of the other operators was. Everyone who knew anything about this structure thought it very attractive. I think it was a matter of common belief.

My company was not at that time in any way affiliated with the Standard Oil Company or any of the Standard group. We were entirely independent.

355 Cross-Examination.

I think our capitalization, par value of all securities at the time of my interview with Secretary Fall, was around $30,000,000, about 85% of it was out at that time.

Redirect Examination.

It is a matter of opinion what our net resources were at that time. It is a matter of opinion what an oil company is worth. The properties of the company, the assets, were appraised at $50,000,000 net value, by independent appraisers. It might not have been worth that.

Recross Examination

The common stock was around $27,000,000, and the preferred $3,000,000. The par of each was $50. My best recollection is that the common stock was then selling around $30 per share, and the preferred about $40 per share.

The Prairie Oil and Gas Company was at that time not interested in our company in any way. The control of the common stock passed to the Prairie in November. The Prairie is not controlled by the Standard. That is my opinion of it. I don't know wehther the policies of the Prairie through stockholders elections and things of that kind have been in the Standard, but I believe it was not the case. I think there is no control of the Prairie by any other company. Secretary Fall did not ask me anything about the company's financial ability at our interview. I advanced my arguments as a fellow would appealing for a lease, made suggestions that occurred to me. I furnish a list of the range of prices of Producers and Refiners Corporation, common and preferred stock, for the month of March, 1922, which shows that the common stock from March 1 to 31 ranged on various dates between $26¼ and $29 per share. The preferred on the only sale made during that month was at $37½ per share.

The Producers and Refiners Corporation, common and preferred stock, authorized, issued and outstanding, as of the close of the month of March, 1922, was, at $50 par, preferred $2,961,950; the common as of March 31, 1922, at $50 par, was $23,195,550.

356 Deposition of JOHN C. SHAFFER, a witness on behalf of Plaintiff.

Direct Examination.

I reside at Evanston, Illinois; am the publisher of a number of newspapers and am in the grain business. I am interested in the Maryland Oil Company which owns some land on the Western edge of the Teapot Dome. Prior to 1921 the Maryland Oil Company had attempted to develop oil by boring a well down, I think, in Section 30—my map will show—and got down nearly to the second Wall Creek sand—there was some oil in the first Wall Creek sand—when the powerhouse burned down one night and everything was destroyed and that well was abandoned because the powerhouse was destroyed and the tools were jammed in the pipe, etc.

In the late Spring of 1921 I made an application for a lease on lands in the Teapot Dome, in Section 33, Township 39 North, Range 78 West, 6th P. M. I saw Secretary Denby and afterwards Secretary Fall about that application. I wrote a letter, dated May 11, 1921, to Secretary Denby and mailed it to him after I had had my talk with him. The substance of what was said in my talk with Denby was that I had this land adjoining Teapot Dome and that it had been intimated that the Teapot Dome would sooner or later be opened for leases to individuals and if that were the case I wanted to make application for 600 acres in Section 33, because I had already 40 acres in that, which would give me a full section. He suggested that I write to him in regard to that, and this is the outcome of that conversation. I would not be absolutely sure of it, but I think I saw Secretary Fall at the same time and made the same suggestion to him, that I had this Maryland land and when the Teapot Dome was opened up I would like to have an opportunity to put in an application for some of that land.

Letter, Shaffer to Denby (Pl. Ex. 39) offered.

357 May 11, 1921.

Hon. Edwin Denby,
Secretary of the Navy,
Washington, D. C.

My dear Mr. Secretary:

Agreeable to your suggestion, I herewith enclose formal application for a piece of land in what is commonly called the Naval Petroleum Reserve No. 3, in the County of Natrona, Wyoming.

I have application in before the Secretary of the Interior under the name of the Maryland Oil Company for certain lands bordering on this Naval Reserve, application Serial No. 026344 Douglas, as shown on enclosed colored map, and I am assured that I will have a lease given to me for this land because I have complied with all of the requirements of the law and have already expended about $100,000 of my personal money without any assistance from anybody else, in endeavoring to secure oil in this land.

I now desire to make special and personal application for the following described land bordering on the land applied for under the above described application;

The East one half ($E^1/_2$) the North West one quarter ($NW^1/_4$), the East one half of the South West one quarter ($E^1/_2$ of $SW^1/_4$) and the Northwest quarter of the South West quarter ($NW^1/_4$ of $SW^1/_4$), all in Section 33, Township 39 North, Range 78 West of the Sixty P. M. in Natrona County, Wyoming, amounting to 600 acres. The other 40 acres in this section will be given to me in my application for the Maryland Oil Company, which I own and control, now pending before the Department of the Interior. This 40 acres and the balance of the 600 acres will give me the whole section of 33.

I consulted, after leaving you, Judge E. C. Finney, the First Assistant Secretary of the Interior, who gave me the enclosed citation from the law governing the rights of the Secretary of the Navy to lease this land in his discretion and on such terms as he may dictate. Judge Finney informed me that under this law you had absolute right and authority to make a lease on any of this Naval Reserve land that you might deem wise.

I am informed that recently you have issued leases on Naval Reserve No. 1 or No. 2 in California and the same condition will eventually prevail in the Teapot Naval Reserve No. 3, in Wyoming, as now prevails in the Reserve No. 1 or No. 2, in California.

Yours very truly,

JOHN C. SHAFFER

JCS.W

358 Letter, Shaffer to Finney (Pl. Ex. No. 40) offered.

May 11, 1921.

Judge E. C. Finney,
Department of the Interior,
Washington, D. C.

My dear Judge:

I am enclosing you a copy of a letter I am mailing today to Secretary Denby. If you can consistently help me in this matter I would greatly appreciate it. I have no doubt Secretary Denby will consult with you in regard to it before making any lease.

Appreciating all the courtesies I have received at your hands, I am,

Yours sincerely,

JCSD JOHN C. SHAFFER

Letter, Finney to Shaffer (Pl. Ex. No. 41) offered.

May 13, 1921.

Mr. John C. Shaffer,
c/o Chicago Evening Post,
Chicago, Illinois.

Dear Mr. Shaffer:

Yours of May 11, 1921, inclosing copy of your letter to Secretary Denby received, and I will be glad to give the matter consideration should Secretary Denby care to consult me.

Respectfully,

E. C. FINNEY
First Assistant Secretary.

Letter, Denby to Shaffer (Pl. Ex. No. 42) offered.

In reply address
The Secretary of the Navy
And refer to No.
13668-84:257/22

Navy Department
Washington

2 June 1921.

Dear Sir:

Your letter of 11 May 1921, was duly received but owing to a contemplated change in the manner of handling the Naval Petroleum Reserve the reply thereto has been delayed.

This change has now been effected by an executive order issued by the President, a copy of which is herewith
359 enclosed for your information. Under this executive order the general handling of the Naval Petroleum Reserves has been committed to the Secretary of the Interior with certain reservations. I have accordingly forwarded your letter to the Secretary of the Interior for appropriate action thereon.

Yours sincerely,

(Signed) EDWIN DENBY,
Secretary of the Navy.

(The enclosure is the Executive Order Exhibit A of the Bill)

Letter Shaffer to Denby (Pl. Ex. No. 43) offered.

June 6, 1921.

Hon. Edwin Denby,
Secretary of the Navy,
Washington, D. C.

My dear Mr. Secretary:

I have your favor of the 2nd and note fully its contents. Permit me to thank you for the courtesy of your letter and the enclosure. I shall take this matter up with the Secretary of the Interior.

I am,

Yours very truly,

JCS:W JOHN C. SHAFFER

Letter Fall to Shaffer (Pl. Ex. No. 44) offered.

Department of the Interior
Washington

Jun 17, 1921

Mr. John C. Shaffer,
Chicago Evening Post,
Chicago, Illinois.

Dear Mr. Shaffer:

I am in receipt of your letter of June 8, 1921, transmitting a letter from your attorney submitting information about the application of the Maryland Oil Company for an oil pros-

pecting permit under Section 19 of the Act of February 25, 1920, for certain lands in the Douglas, Wyoming, land district.

This supplemental evidence, consisting of a certified list of the stockholders of the Maryland Oil Company and an itemized statement of work done, has been referred to the Commissioner of the General Land Office for filing with the case record. I understand that the Commissioner is awaiting a report from the local office on his letter of May 9, 1921, mentioned in the letter from your attorney.

In regard to your application for an oil lease on 600 acres in Sec. 35, T. 39 N., R. 78 W., in Naval Petroleum Reserve No. 3, for which application is made in your letter of May 11, 1921, to the Secretary of the Navy, a copy of this letter having been referred to this Department for consideration in accordance with Executive Order of May 31, 1921, there is no development in this reserve and under present conditions, having in view the desires and needs of the Navy, this Department does not feel warranted in leasing any of the land in Reserve No. 3 at the present time. However,
360 should circumstances later justify some development in this reserve, your application, which has been placed on file, will have my consideration.

Respectfully,

(Signed) ALBERT B. FALL.
Secretary.

Letter Shaffer to Fall (Pl. Ex. 45) offered.

June 20, 1921.

Hon. Allen B. Fall,
Secretary of the Interior,
Washington, D. C.

My dear Mr. Secretary:

I have your favor of the 17th and note fully its contents. The data asked for in regard to my application for lease in the name of the Maryland Oil Company, which I own, will be sent from Casper I hope this week and I appreciate very greatly your courtesy in this matter.

I note what you say about my application for lease on 600 acres in Section 33 of the Naval Reserve No. 3, and I will bear in mind your suggestion that if any leases are made in

the Naval reserve my application will receive full consideration from you. I am quite sure that in the very near future the Government will find it to its advantage to make leases in the Naval Reserve otherwise it will be drained off and there will be no oil there.

Yours very truly,

JOHN C. SHAFFER.

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361 I think I had an interview with Secretary Fall subsequent to the writing of that letter. My impression is that I saw the Secretary in February or March of 1922 and renewed the suggestion that I wanted to make application for a part of this land in Teapot Dome if it was opened to the public. The Secretary said, in substance, that if it was opened to the public my application would receive consideration. The letter of February 27, 1922, from Albert B. Fall to me refreshes my memory as to the time when I had my talk with the Secretary.

Letter, Fall to Shaffer (Pl. Ex. 46) offered.

362 The Secretary of the Interior

Washington

February 27, 1922.

Dear Mr. Shaffer:

I have your note of the 25th, advising that you expect to be in Washington Wednesday or Thursday of this week, and expressing the wish of having an interview with me.

If you can find it convenient to call at the Interior Department on Thursday, say three o'clock, I will be indeed glad to see you. I have some matters that I also would like to talk over with you.

Yours sincerely,

ALBERT B. FALL.

Telegram, Snaffer to Fall (Pl. Ex. No. 47) offered.

March 14, 1922.

A. B. Fall
Secretary of Interior
Washington, D. C.

Will be in Washington Friday morning would like about half hour with you Answer

JOHN C. SHAFFER.

Letter, Shaffer to Fall (Pl. Ex. No. 49) offered.

March 16, 1922.

Hon. A. B. Fall,
Secretary of the Interior,
Washington, D. C.

My dear Mr. Secretary:

I have your telegram of this date and note you will not be in Washington on Friday but would be pleased to see me on Monday. I will therefore postpone my visit and will call upon you between half past ten and eleven o'clock on Monday morning.

Trusting this will be convenient hour for you to see me, I am,

Yours sincerely,

JOHN C. SHAFFER.

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363 Pursuant to that correspondence I met Mr. Fall on the last day mentioned in the correspondence. At that interview the Secretary informed me that he was then in negotiation with Mr. Sinclair for a lease of the Teapot Dome acreage. I called his attention to the fact that I had a written application on file there and that I expected to get some of that land, and he told me that he had told Mr. Sinclair of my application and that he wanted him to reserve 200 acres of the total for me. He advised, or suggested to me to see Mr. Sinclair. I said to him that I was not satisfied with 200 acres, that Mr. Sinclair was getting 9,000 acres and that I thought 200 acres was a very small proportion out of the lot, as I had made application for 600 acres. He said, "Well, you go up and see Mr. Sinclair and I think you will find him a very reasonable man and you probably will make satisfac-

tory arrangements with him". I would not want to be understood as saying those were the verbatim words of what he said, but that is the substance of what he said. I sent my telegram of March 23, 1922, to Fall after I had my interview with Sinclair.

Telegram, Shaffer to Fall (Pl. Ex. 501 offered.

N. Y. Mch. 23—1922

Hon. A. B. Fall, Sec of Interior
Washington, D. C.

Have agreed with Mr Sinclair for certain amount of acreage I am very grateful to you for your interest and help in this matter Am leaving for Chicago.

JOHN C. SHAFFER.

I went to New York at Mr. Fall's suggestion to see Mr. Sinclair. I met Mr. Sinclair in his office in New York. I recalled to Mr. Sinclair that I had made application for 640 acres of this Teapot Dome land and I felt that I was entitled to some of the land and wanted that much if I could get it; and he informed me that Secretary Fall had said to him that he had wanted him to reserve 320 acres of the land for me, 80 acres of which was to go to Gerald Hughes, and I said I had nothing to do with Gerald Hughes in any way and that 240 acres would not be satisfactory to me at all. Well, the discussion went along for maybe a half an hour or
364 more, and he stated he thought 240 acres was a good deal of land; but we finally agreed either at that interview or at a later interview, I think. There was no contract entered into at that time or no really definite amount.

Then I saw Sinclair a second time in New York, when he said, "Now, I have come to the conclusion to set aside 420 acres for you"; and my map there which I brought will show where he marked it off, and I accepted his suggestion of 420 acres in place of 240 acres in order to get the thing consummated. This map I produce is my map which Mr. Sinclair handed me and this shows the development of Sinclair's oil in the field at that time. Here you see the word "Maryland." You see I have one quarter section of this Section 33. It is not in the Naval Reserve. Up here where these pencil marks are is where Mr. Sinclair was offering to give me 420 acres. The figures 2815 are Mr. Sinclair's. This was not at the interview in March, but much later. I understood Mr.

Sinclair had the lease when I first saw him. I understood that a lease had been agreed upon, but it had not been signed. Secretary Fall told me that. Mr. Sinclair had then done no development in the Teapot Dome and didn't at that time show me his map. At the first interview in March he didn't want to allocate to me more than 200 acres. As I refresh my memory from my telegram, I wanted the whole section and it was left in this way: "all right, Shaffer, I will agree that you shall be satisfied on this thing," and I took it therefore that I was to have this 640 acres.

Letter, Sinclair to Shaffer (Pl. Ex. 51) offered.

365

H. F. Sinclair
45 Nassau Street,
New York.

May 28, 1922.

My dear Mr. Shaffer:

I wish to acknowledge receipt of your letter of May 25th, and thank you for the information contained therein.

I shall be pleased to call on you at the first opportunity when I am again in Chicago.

With kindest personal regards, I beg to remain,

Yours sincerely,

H. F. SINCLAIR.

Telegram, Sinclair to Shaffer (Pl. Ex. No. 52) offered.

1922 Sep 28 P. M. 4 11

NYA 274 14
NB New York NY 28 525P

John C. Shaffer
Denver Colo

Answering your telegram will be pleased to see you upon your return from San Francisco

H. F. SINCLAIR.

Telegram, Shaffer to Sinclair (Pl. Ex. No. 53) offered.

Sept. 27, 1922

Mr. H. F. Sinclair,
c o Sinclair Oil Co.,
New York City, N. Y.

Your telegram of this date has been forwarded from my Chicago office and received here. I regret to say that I cannot

be in New York next week as I leave here Saturday noon for Los Angeles California and will be at the Ambassador Hotel for two weeks and then return to Chicago Can come to New York soon after arriving in Chicago What is your pleasure.

JOHN C. SHAFFER.

Letter, Shaffer to Sinclair (Pl. Ex. No. 54) offered.

Sept. 29, 1922.

Mr. H. F. Sinclair,
c/o Sinclair Oil Co.,
New York City, N. Y.

My dear Mr. Sinclair:

I have your telegram and note fully its contents. As soon as I return to Chicago I will communicate with you and make a date when it will be convenient and agreeable for you to see me in New York. I expect to be back in Chicago around the twentieth of this month.

Sincerely yours,

JOHN C. SHAFFER.

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366 Letter, Sinclair to Shaffer (Pl. Ex. No. 55) offered

Mammoth Oil Company
45 Nassau Street
New York

September 29, 1922.

Mr. John C. Shaffer,
Ambassador Hotel,
Los Angeles, California

My dear Mr. Shaffer:

I enclose copies of wires sent to you under date of September 27th and September 28th.

The reason for my wiring you for an engagement at this time is for the purpose of working out the agreement in reference to acreage at Teapot Dome. I have received a letter from the Secretary advising in reference to the 200 acres which you are familiar with, 120 acres of which are to be available for yourself and 80 acres for Mr. Gerald Hughes.

Upon your return to the East, I should be pleased to have you advise me, so we can arrange for an appointment.

Trusting that you enjoy a pleasant sojourn in California, I beg to remain,

Yours very truly,

H. F. SINCLAIR, President.

Western Union Telegram

September 27, 1922,
New York N. Y.

Mr. John C. Shaeffer
Chicago Evening Post,
Chicago, Illinois.

Will it be convenient for you to be in New York first of next week. Please advise what day.

H. F. SINCLAIR.

Western Union Telegram

September 28 1922

John C. Shaeffer,
Denver, Colorado

Answering your telegram will be pleased to see you upon your return from Los Angeles.

H. F. SINCLAIR.

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367 Letter, Shaffer to Sinclair (Pl. Ex. No. 56) offered.

October 16, 1922

Mr. H. F. Sinclair,
45 Nassau Street,
New York City.

My dear Mr. Sinclair:

Your favor of September 17, addressed to me at Los Angeles, has followed me and I have it before me this morning.

I expect to return to Chicago the latter part of this week. I have a number of engagements there in connection with the election in Illinois and Indiana, especially in Indiana, where I am supporting Senator Beveridge for the United States

Senate with my papers. I shall be very glad to come to New York as soon as it is possible and have a conference with you in regard to our oil interests in the Teapot Dome.

May I refresh your memory by calling attention to the conference I had in your office in New York with Mr. Aitken and at the suggestion of the Secretary of the Interior. I had on file in the Interior Department a request for a lease on part of the Naval Reserve No. 3, known as the Teapot Dome, and this was known to the Secretary of the Interior. In conference with him, he stated that he was in negotiation with you for the lease of all the land in the Naval Reserve, but had stated to you that he was reserving 200 acres for me. I told the Secretary that I expected to get a much large acreage and, in a further discussion of the matter, he requested me to take up the matter with you direct.

If you will recall, we went over this matter at quite a length and I stated my reason why I felt I was entitled to a much larger acreage. We adjourned the conference about noon and Mr. Aitken and I went to lunch at the Bankers Club and again met you at three o'clock in your office, when you said substantially, Mr. Shaffer, I have considered this matter now very carefully and I am willing to make this proposition: That I will reserve for you 640 acres. I will drill the well on this land and charge the net cost of drilling and then divide the net profits for the oil that is produced." I said to you, "This is very satisfactory to me and I accept the proposition." Inasmuch as you had not at that time signed the contract with the Secretary of the Interior for the lease of the Teapot Dome or Naval Reserve Number 3, it was concluded not to put anything in writing until after you had formally secured the lease. I have just recited this conversation to Mr. Aitken and he corroborates it fully.

JOHN C. SHAFFER.

Telegram, Shaffer to Sinclair (Pl. Ex. No. 57) offered.

Chicago, Ill.,
November 3, 1922.

H. F. Sinclair,
Sinclair Oil Co.,
45 Nassau Street,
New York City, New York.

If agreeable to you I will call on you morning of November ninth. Please answer.

JOHN C. SHAFFER.

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368 Telegram, Sinclair to Shaffer (Pl. Ex. No. 58) offered.

MB New York NY 335 P Nov. 4 1922

John C. Shaffer
The Star, Indianapolis, Ind.

It will be more satisfactory to arrange appointment later in month stop Will advise you as soon as I return to city.

H. F. SINCLAIR.

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369 As a result of the foregoing telegrams I met Mr. Sinclair and it was at that meeting that the map heretofore testified about was gone over and Mr. Sinclair marked the map showing me the territory he would set aside to me. He said he would allot to me, as shown on the map, 420 acres at about the point marked on the map. He said, "Now I will have a formal contract prepared and sent to you". Mr. Zevely and Mr. Stanford, his two attorneys, came to Chicago and presented me with a contract signed by Mammoth Oil Company, by Mr. Sinclair, President. I have not that contract. I sent it back to them because in it he agreed to develop this land and give me one-half of the proceeds of the oil, but there was nothing stated in it as to when any development or how much development was to be done and I told them it was entirely unsatisfactory to me. I so stated to Mr. Zevely and Mr. Stanford; that I wanted the right to develop it myself, and if I made a contract with the Mammoth Oil Company I wanted it stated when they would begin to develop it and how they would prosecute the development. I sent that back to Mr. Sinclair by his attorneys. I didn't keep it. These negotiations have not eventuated in any formal contract. I think since then I have sent Mr. Sinclair one letter, dated December 1, 1923. I make my claim against Mr. Sinclair for some of this land because of the fact that I had a formal application in prior to Mr. Sinclair's making any application and that the Secretary of the Interior said that when it was opened to the public my application would receive consideration; and he said it in a letter and my attorneys informed me that the Secretary could not give all that land away without giving me a hearing either denying me the right to any of this land or giving me some. Therefore, I had that claim that when Mr. Sinclair made his contract with the Secretary I had the right to a part of that land. It was not a gift from Mr. Sinclair; it was, according to our attorneys, a legal right that I had to it. I think

probably Mr. Sinclair didn't answer my last letter of December 1, 1923.

Letter Shaffer to Sinclair (Pl. E. 59) offered

370 December 1, 1923.

Mr. H. F. Sinclair,

45 Nassau St.,
New York City.

My dear Mr. Sinclair:—

Do you recall, before you entered into the contract with the Government for the land known as the Teapot Dome, that, the then Secretary of the Interior, Senator Fall, told you that I had personal application for a section of that land because I had land adjoining it and had spent considerable money trying to develop this land and that he desired to set aside 200 acres of the Teapot Dome for my use and my personal development of same.

Before the contract was signed with you, I had a conference with the Secretary of the Interior in Washington and he informed me of this conversation which he had with you, and, when I told him that I had hoped to secure, at least, a full section of the land, he said, "Then, I suggest that you go and see Mr. Sinclair and I have no doubt but that you and he will come to some mutual understanding about the amount of land that you are to have.

Soon after this, I had a conference with you in your office in New York, and Mr. Aitken was present at the time, and we went over this whole matter, and you were to take it under advisement as to whether you would concede to me the right to have a full section of 640 acres to develop, or whether we would compromise on a smaller acreage.

We had further conferences and further correspondence on the matter and finally came to an agreement that I was to have 480 acres, including the East $\frac{1}{2}$ of the northwest $\frac{1}{4}$ of Section 28, Township 39 North, Range 78 West—the Northwest $\frac{1}{4}$ of Section 28, Township 39 North, Range 78 West—the Northwest $\frac{1}{4}$ of Section 27, Township 39 North, Range 78 West and the West $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 27, Township 39 North Range 78 West.

We had a verbal understanding, when I agreed to accept this compromise in acreage, that you would develop this

land and I was to have one half of the net proceeds of the oil after the Government royalty had been paid.

Soon thereafter, your attorney, Mr. Zevely and Mr. Sanford, called upon me and presented a contract for the development of this land by the Mammoth Oil Company, which I told them was not satisfactory to me, and pointed out the reasons why.

I afterwards wrote to Mr. Sanford (on November 13th) setting forth the kind of a contract I would be glad to enter into with the Mammoth Oil Company but as yet I have had no reply to this letter. I am, therefore writing you direct.

If we cannot agree upon the terms of the contract, whereby the Mammoth Oil Company will develop this land, I desire to develop it myself and or make a contract with some other company, who will develop it for me.

I do not desire to get into any quarrel with you or with the Mammoth Oil Company, but rather seek cordial and friendly cooperation, but it has now been a year and a half or more since my first communication with you on this matter, and I think, therefore, that sufficient time has been given to a full and careful analysis of this whole proposition.

It is not just to me to have this land subject to other adjoining lands being developed and draining the oil from the land allotted to me, much longer. I desire, therefore, to proceed to develop this acreage and get what I can out of it while oil still remains there.

I trust, therefore, that you will either send me a contract along the lines that I have indicated would be acceptable in my letter to Mr. Sanford or else consent that I can either develop it myself or make a contract with some other company to develop it.

Very sincerely yours,

JOHN G. SHAFFER.

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371 Letter, Shaffer to Finney (Pl. Ex. No. 60), offered.

The Ambassador,

Los Angeles, April 19, 1922

My dear Judge Finney:

The Morning Times quotes you as saying that the contract for developing the Naval Reserve in Wyoming has been

made with the "Mammoth Oil Co. of Delaware", Mr. Sinclair, president, etc. As you know, I have a personal interest in this deal. Secretary Fall had arranged with Mr. Sinclair for some acreage for me personally. I would like, therefore, to have a copy of this contract, if it is printed. Please mail me a copy care Chicago Evening Post. And if it has to be typed, please have it done and I will pay for the expense.

I expect to be back at my Chicago office the last of next week.

Thanking you for the add. favor to me, I am

Yours truly,

JOHN C. SHAFFER.

Letter, Finney to Shaffer (Pl. Ex. No. 61), offered.

Department Of The Interior

Washington

April 25, 1922.

Hon. John C. Shaffer,
c/o Chicago Evening Post,
Chicago, Ill.

Dear Mr. Shaffer:

Your letter of the 19th, requesting that I send you, if permissible, a copy of the contract between the Secretary of the Interior, the Secretary of the Navy, and the Mammoth Oil Company, relative to Naval reserve, Wyoming, is received.

For military reasons, it has been deemed advisable not to make the full contract public at this time, and Secretary Fall, who is out of the city, has directed me not to give out copies of the contract at present. I enclose for your information, however, copy of memorandum given to the press April 18; also copy of report to the Senate upon the so-called Kendrick resolution. If and when the contract is made public, we will be glad to furnish you with a copy of same.

Respectfully,

E. C. FINNEY,

Acting Secretary.

Inclosure 1918.

Enclosure in above letter (Pl. Ex. No. 62), offered.

Released for morning papers of April 19 22.

Department of the Interior

Office of the Secretary

April 18, 1922.

Memorandum For The Press:

For more than a year the Secretary of the Interior and the Secretary of the Navy have had under consider-
372 ation the handling of the two Naval Reserves in California, and the Naval Reserve in Wyoming, the latter known as the Teapot Dome, with the idea of working out a policy which would secure the greatest conservation and use for the Navy of the oils in such reserves, prevent drainage by wells of private owners on adjoining lands, and secure to the Navy an available storage of fuel oil at convenient points readily accessible wherever and whenever needed. It was found that oil was being drained from all of these Reserves in very large quantities, amounting to millions of dollars of loss up to the present time, by wells on adjoining lands, and that in all probability within a few years the Government reserves would be depleted. It was also ascertained that the storage of fuel oil in suitable tanks resulted in practically no loss—certainly not exceeding one-tenth of one per cent per annum. The Naval Reserves in California can be reached through existing pipe lines, and a large portion of the lands have been leased under preference rights granted by the general oil leasing act. The principal problem there was the exchange of the crude oil, which in its natural state is unfit for use by the Navy for fuel oil, in proper and available storage. With respect to the Naval Reserves in Wyoming, known as the Teapot Dome, same was not available for Naval use or for exchange for fuel oil, for the reason that the field lies in the interior and is not connected by pipe line with any point on the sea coast or with the existing pipe line systems of the country. While there are no wells within the limits of the reserve, it was found, after a careful recent geologic study that the reserve was being drained from wells on nearby lands, and in addition the Government was faced with a number of asserted claims within the reserve under the mining law. Moreover, the famous Salt Creek oil field, lying immediately contiguous to the Teapot Dome, and which has been leased under the general leasing act, was without adequate pipe line and

refinery facilities, and independent producers have been unable to dispose of more than forty per cent of the possible production of existing wells. Furthermore, competition was absent from the field through lack not only of pipe line and refining facilities, but of competing companies. Therefore, after careful consideration, the Secretary of the Interior, with the complete concurrence of the Secretary of the Navy, invited and considered proposals from a number of prominent oil companies and individuals for the development of the Wyoming Naval Reserve, with the accompanying guarantee of the construction of adequate pipe line facilities from the field to Atlantic and Gulf of Mexico points through connection with existing pipe lines. It was also desired that provision be made for the exchange of the crude oil produced for fuel oil for naval purposes, in such manner and at such points as might be designated by the Navy. After full consideration of all the offers submitted, a contract was approved by the Secretary of the Interior and the Secretary of the Navy with the Mammoth Oil Company, a Delaware corporation, H. F. Sinclair, President. The contract is in the form of a lease, with graduated royalties up to 50 per cent for the entire area of Naval Reserve No. 3 in Wyoming.

The contract provides for the drilling of at least twenty wells within a limited time, for the construction of a pipe line from the field to existing pipe lines in Missouri, for the exchange of crude for fuel oils, the latter for Naval purposes, for the delivery of Navy-specified bunker A oil at any point named in the contract from Guantanamo, Cuba, to the northeast corner of the United States. It provides for a line of credit under which in exchange for the crude oil ample storage for all the product is to be provided without cash outlay by the Government at any point fixed by the Navy Department along the coast described. It provides that the lessee shall at such or any other points, at his own expense, and without obligation on the part of the Navy, provide gasoline, kerosene, lubricating and cylinder oil at market prices.

It provides prior right of transportation for all Governmental oils from not only the Teapot Dome but from the Salt Creek field, even prior to the uses of the pipe line by the lessee. It makes the pipe line when built a common carrier for all Governmental oils. The pipe lines already constructed, with which the new pipe line will connect, involve a present investment of $115,000,000, and the present con-

tract calls for an investment on the part of the lessee
373 of not less than $26,000,000 in addition. Furthermore, the contract will bring about immediate competition in the Salt Creek field, and will add from 40 to 60 cents per barrel to the present prices of Governmental royalty oils, now amounting to more than 5,000 barrels per day. This is secured by an option given the government to sell royalty oil on basis of Mid Continent prices if and when desired. This production at present is but 40% of the capacity of existing wells, which will immediately be raised to 100%, yielding to the Government for Reclamation, State and Treasury purposes, approximately 12,000 barrels of oil per day, with an added value thereto of from 40 to 60 cents per barrel, or, in other words, an added price over and above that which the Government and the independent producers are now receiving of more than $6,000 per day. Before the contract was approved the Mammoth Oil Company presented to the Secretary of the Interior deeds to the United States for all outstanding claims of title of every character in the Wyoming Naval Reserve.

Naval Reserves in California.

Proposals from a number of leading oil companies for the handling and exchange of crude oils in the Naval Reserves in California for fuel oil in storage at Pacific Coast points designated by the Navy, were received by the Department of the Interior Saturday, and an award of contract was today authorized to the Pan American Petroleum Company, the best and lowest bidder. This involves the exchange of the Navy's royalty oil from the reserves for fuel oil in storage at points designated by the Navy on the Pacific Coast, in storage, of the type selected by and approved by the Navy Department.

As stated above, the leases from drainage in these reserves have been enormous, running into many millions of dollars. The approval of this contract will enable the Government to save the remaining oil in these reserves and exchange it for fuel oil in storage for the benefit of the Navy. It was further stated to be the policy of Secretary Fall upon expiration of existing contracts with the Shipping Board to offer the Government royalty oils in Wyoming and Montana outside Naval reserves for sale with the principal object of bringing a third competitor into the field with refineries and pipe lines, thus insuring competition and the highest securable prices for Government oils.

Enclosure in above letter (Pl. Ex. No. 63), offered.

Department of The Interior

Washington

April 21, 1922.

Dear Mr. President:

In response to S. Res. 277, relating to Naval Petroleum Reserve No. 3, Wyoming, commonly known as the "Teapot Dome", requesting the Secretary of the Interior and the Secretary of the Navy to inform the Senate, if not incompatible with the public interests, whether negotiations are pending with private parties for the operation of lands included in said reserve, and if so, the names of the parties, the terms and conditions of proposed agreements, and whether opportunity will be given the public for competitive bidding for operation of the lands, or whether it is proposed to award a lease or operating contract or agreement for the entire area to one person, corporation, or association, we have the honor to advise as follows:

For more than a year the Secretary of the Interior and the Secretary of the Navy have had under consideration the handling of the two naval reserves in California and the naval reserve in Wyoming, commonly known as the Teapot Dome, with the idea of working out a policy which would secure the greatest conservation and benefit for the Navy of the oils in such reserves, and secure to the Navy an available storage of fuel oil at convenient points readily accessible wherever and whenever needed, particularly for future needs.

The Crude oil in none of these reserves, nor in fact any crude oil, is suitable for use by the Navy as fuel in an unrefined state, and before being available for storage and naval use must be placed in the form of fuel oil. Experts state that the storage of fuel oil in suitable tanks results in practically no loss from evaporation, etc., certainly not exceeding one-tenth of one per cent per annum.

The naval reserves in California have, by drilling and production on privately owned lands adjoining, already been drained to a very large extent, involving a loss to the Government of millions of barrels of oil, and from a careful geologic study recently made by an expert of this Department it was found that the Teapot Dome was menaced with a similar drainage danger. The naval reserves in California

can be reached through existing pipe lines and the principal problem there was the exchange of the crude oil for fuel oil in proper and available storage.

With respect to the naval reserve in Wyoming, same was not available for naval use or for exchange of fuel oil to the advantage of the Navy, for the reason that the field lies in the interior and is not connected with pipe lines at any point on the seacoast or with existing pipe-line systems of the country; while the famous Salt Creek field lies immediately contiguous to the naval reserve (Teapot Dome), and the lands in the Salt Creek field have been leased under the general leasing act, that field was without adequate pipe line or refinery facilities, and independent producers have been unable to dispose of more than 40 per cent of the possible production of existing wells. Manifestly, therefore, the oils in the naval reserve could not be handled with existing facilities, and after careful consideration of the matter, the Secretary of the Interior, with the complete concurrence of the Secretary of the Navy, considered proposals from a number of prominent oil companies and individuals for the development of this reserve, with the accompanying guarantee of the construction of adequate pipe-line facilities connecting the field to Atlantic and Gulf of Mexico points, through connection with existing pipe lines. It was also desired that provision be made for the exchange of crude oil produced for fuel oil for naval purposes, in such manner and at such points as might be designated by the Navy. After full consideration of all the offers submitted, a contract was entered into by the Secretary of the Interior and the Secretary of the Navy on April 7, 1922, with the Mammouth Oil Company, a Delaware corporation, H. F. Sinclair, president.

The contract is in the form of a lease covering the entire area of Naval Reserve No. 3, with graduated royalties running up to 50 per cent, according to the production and specific gravity of the oil. It provides for the drilling of at least twenty wells within a limited time, for the construction of a pipe line from the field to existing pipe lines in Missouri, for the exchange of crude for fuel oils, the latter for naval purposes, and for the delivery of Navy specified fuel oil at points designated by the Navy, from Guantanamo, Cuba, to the northeast corner of the United States. It provides for a line of credit under which, in exchange for the crude oil, ample storage for the fuel oil is to be provided without cash outlay by the Government at any point fixed by the Navy Department along the coast described. It provides that the lessee

shall, at such or any other points, at its own expense and without obligation on the part of the Navy, provide gasoline, kerosene, lubricating and cylinder oil at market prices. It provides prior right of transportation for all governmental oils from not only the Teapot Dome, but from the Salt Creek field, even prior to the uses of the pipe line by lessee. It makes the pipe line when built a common carrier for all Government oils. The pipe line already constructed with which the new pipe line will connect involved a present investment of $115,000,000, and this contract calls for an investment on the part of the lessee of not less than $26,00,000 additional. Furthermore, the contract will bring about immediate competition in the Salt Creek field and will add from 40 to 60 cents per barrel to the present prices of governmental royalty oils, now amounting to more than 5,000 barrels per day. This is secured by an option given the Government to sell royalty oil on basis Midcontinent prices, if and when desired.

375 The production from the Salt Creek field at present is about 40 per cent of the capacity of existing wells, which will be immediately raised to 100 per cent, yielding to the Government for reclamation, State and Treasury purposes, approximately 12,000 barrels of oil per day, with an added value thereto of from 40 to 60 cents per barrel; or, in other words, that added price over and above the amount which the Government and independent producers are now receiving.

It may be further stated that private claims were being asserted under the mining laws to a number of acres within the naval reserve. Before the contract was approved the Mammoth Oil Company presents to the Secretary of the Interior deeds to the United States for outstanding claims of title of every character in the reserve.

For the further information of the Senate we have to advise that Naval Reserve No. 3, Wyoming, was created by Executive Order of April 30, 1915; that in the act of June 4, 1920, (41 Stat. 813), making appropriations for the naval service, etc., Congress provided:

That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of the act of Congress approved February 25,

1920, etc., to conserve, develop, use, and operate the same, in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof and those from all royalty oil from lands in naval reserves, for the benefit of the United States * * *

At the suggestion of the Secretary of the Navy, the President of the United States directed the Secretary of the Interior to take over the administration of lands in the naval reserves in consultation and cooperation with the Secretary of the Navy. The Interior Department and the Navy Department have been in close cooperation and have been endeavoring, as they saw it, to carry out the purposes for which these naval reserves were created, i. e., not the sale of oil for commercial or other purposes, but the securing of a reserve of fuel oil for Navy purposes.

Respectfully,

(Signed) EDWARD C. FINNEY
Acting Secretary of the Interior

(Signed) EDWIN DENBY
Secretary of the Navy.

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376 Cross-Examination.

I had had an application in for part of the Teapot Dome prior to all of these conferences; indeed, I had made some suggestion that I desired part of the Teapot Dome before Secretary Denby became Secretary, in the previous administration, and it was my understanding that he who made such an application, who first came for such leases, had some equitable right which would be regarded by the Department, would have a preference in the leases. My application at no time was for more than 600 acres. I already had, in the name of the Maryland Company 40 acres in Section 33, and in addition had lands running along the border of the Teapot Dome for a mile and a half, and besides having these lands on the border, which I felt gave me some right, I had expended a considerable sum of money in drilling a well down to the first Wall Creek Sand, out of which I got some oil, and had then started on down towards the second sand and had expended $115,000; and it was because of this expenditure in that development and of the applications I had made that I felt I was entitled to some preference right. And that was the thing I brought to Secretary Fall as the reason why I

should have some land there, and that was the whole substance of it. In my talk with Mr. Sinclair later I stated exactly the same things; that is the sole reason why I should have some recognition. It was on that basis and for no other reason that those negotiations were made. That is the whole story.

Deposition of Bruce Helms, a witness on behalf of Plaintiff.

Direct Examination.

I reside in New York City and am employed with Blair & Company, was Vice President of the Texas Pacific Coal and Oil Company in 1922.

Teapot Dome first came to my attention about September 1, 1921. I called on Colonel Roosevelt and Mr. Finney regarding it. I got information from Colonel Roosevelt that he didn't think it should be leased, and also from Mr. Finney. I was in Washington subsequent to that time, according to a telegram, some time in April, 1922. According to the dates of the telegrams it was early in April. Telegrams
377 seem to indicate that I was in Washington about April 10th. I saw Colonel Roosevelt, Mr. Finney, Secretary Denby and Secretary Fall. I discussed the matter of a lease with Secretary Denby. He said the matter was entirely out of his hands. He said I should talk with the Interior Department. Subsequent to that I talked with Mr. Finney. He told me that the matter was entirely in the hands of Mr. Fall. I saw Mr. Fall. I told Mr. Fall that some time before we were very anxious to put in a bid on the Teapot Dome; that we were at that time told that there was no possibility of the Teapot Dome then being leased. I told him I thought we wanted to submit a bid, and he told me he would be very glad to entertain a bid. He first asked me whether the Texas Pacific Coal and Oil Company had any connection with the Standard Oil interests, as he said he wished this contract to be made with a company independent of the Standard Oil. I told him the Texas Pacific Coal and Oil Company, as far as I knew, had no connection with the Standard Oil Company. He then asked whether the Texas Pacific Coal and Oil Company was a company competent to handle this contract or whether they were just trying to ring in on it. I told him I thought the Texas Pacific Coal and Oil Company was competent to handle the contract. He then told me that he had asked a number of independent companies to submit bids and

of all the conversations that he had with representatives with these different independent companies Mr. Sinclair was the only man who was in a frame of mind receptive to discuss the terms or to come to some arrangement.

He talked at great length concerning pipe lines, tankage and the interchange of oil. At no time did I talk with him about a contract with Mr. Sinclair. That was because I thought if I had asked him whether he had signed a contract with Mr. Sinclair, Mr. Fall would have asked me why I came in to talk it over with him.

When I left Mr. Fall he practically told me he would entertain a bid.

I told Mr. Fall I had no practical knowledge of the oil business that the only way in which this matter could really be discussed intelligently was for him to discuss it with other officials of the company. I think I asked for an opportunity for that to be done. He said he would be very glad to
378 see them; that he would confer with them at Three Rivers, New Mexico. I cannot say how he came to state the place as Three Rivers, New Mexico; except that probably I told him that we were going to have an annual meeting in Fort Worth and we would all be down there and it would be more convenient to go from Fort Worth over to Three Rivers. He told me he was going to Three Rivers within a couple of days and he would see our officials there.

I went back and discussed the matter with our officials. Before I went back to Texas I had a talk with Judge Parker of the Texas Company to ask him whether he would be willing to go in with us in handling the Teapot Dome. He replied affirmatively.

Telegram, Helms to Fall (Pl. Ex. 64) offered.

379 Ft. Worth, Texas, April 19, 1922.

Honorable Secretary of Interior,
Albert B. Fall, Three Rivers, New Mexico.

Upon arriving here have noticed newspaper report from Washington stating Sinclair had closed contract with you for development Teapot Dome structure. Earnestly request that you grant the conference requested by Mr. Penn under date of April seventeenth at which Mr. Penn, Mr. H. L. Marston formerly of Blair and Company and myself would like to discuss proposition for development of this property and also development of other government leases in that terri

tory which you mentioned to me. Hope you will arrange for conference latter part of this week so that Mr. Marston can come on from California.

BIRCH HELMS, Vice President
Texas Pacific Coal & Oil Co.

Telegram, Helms to Fall (Pl. Ex. 65) offered.

Thurber, Texas, April 19, 1922.

Honorable Albert B. Fall
Secretary of Interior
Three Rivers New Mexico

Referring to my telegram from Fort Worth this morning Mister Marston and Mister Penn merely wish to learn from you your idea for development of Teapot Dome structure as well as Salt Creek field and other Wyoming territory stop It is not their purpose to submit a definite detailed proposition to you at this conference as I understood from my conversation with you in Washington that you would hold final action on Teapot Dome structure and Salt Creek matter open for another month stop We are particularly interested in Teapot Dome structure because over six months ago I requested an opportunity to submit a proposition for the development of this structure to Judge Phinney Colonel Roosevelt and Secretary Denby stop At that time they informed me that no prospect of its development was in view for a long time but that I would be advised when Government would consider development by private companies stop Consequently we are very anxious to discuss matter now with you informally with view to submitting definite proposition in the immediate future in competition with other bids that have been submitted to you such as by Sinclair

(Signed) BIRCH HELMS

Telegram, Fall to Helms (Pl. Ex. 66) offered.

1922 Apr 20 PM 2 54

A166DA 21 Govt 1 Extra

Three Rivers N Mex 1961 20

Birch Helms
Vice President Texas Pacific Coal and Oil Co.
Ft Worth Tex.

Regret cannot make appointments while on this trip Teapot Dome matter closed Salt Creek royalties open until my return Washington.

FALL Secretary.

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380 Telegram, Helms to Fall (Pl. Ex. 67) offered.

Ft. Worth, Texas, April 21, 1922

Honorable Albert B. Fall
Secretary of Interior,
Three Rivers, New Mexico.

With reference to your telegram of seventeenth advising the Teapot Dome contract has been closed we feel that our company should have been accorded the opportunity to bid in competition with Sinclair especially in view of our request to the Interior and Navy Department six months ago for an opportunity to submit a bid for the development of this property and also in view of my conversation with you on April tenth when I understood that the matter would be held open for another month. We have taken the liberty to request the President to consider our position in this matter. In accordance with your telegram we will be very glad to confer with you at any time you may appoint with reference to the Salt Creek matter.

BIRCH HELMS, Vice President
Texas Pacific Coal & Oil Co.

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381 Referring to the statement in the telegrams that Secretary Fall stated that the matter would be held over for another month, or words to that effect, when I saw those telegrams this morning for the first time in two years I didn't remember, and I don't remember now, I cannot recall that Secretary Fall said that he would hold it open for one month as those telegrams indicate. I cannot state whether my mind is better on the subject now than it was then. I should think that my memory would be clear about the matter at the time the telegrams were sent.

I think the capitalization of the Texas Pacific Coal and Oil Company at that time was $10,000,000. I think it had a surplus. I cannot give you the figures. I do not know what the market value of its stock was at that time.

At the interview Secretary Fall went at great length into the question of pipe lines, storage facilities, tankage, and questions of that kind, the details of which I cannot give. He didn't make any statement to me at that interview to the effect that any contract had been closed for the Teapot Dome, nor did he make any statement to the contrary. The Sinclair contract was never mentioned during our discussion.

Cross Examination.

The only way I can place the date of my conversation with Secretary Fall is in the telegram here. I have no recollection at all and that date on a copy of the telegram before me is the only means by which I can set any date at all. The date on that copy is April 10th.

I did not actually give anything of the terms on which our company or anybody I represented might agree to undertake this development.

Mr. Fall talked to me about the terms of the type of contract that he wanted to make, that a pipe line was desired and that tankage was desired. Those were his terms, as he stated, no one else's terms. He didn't use the expression that they were no one else's terms; I got the impression that they were his own terms. I cannot give you the actual words he used, except this, that he told me that he had a
382 definite idea for the development of this property, that he had talked it over with a number of independent companies, that each one of those companies found his terms, he put it, unacceptable, and Mr. Sinclair was the only one who was in a receptive frame of mind. I understood from him he had gone over the matter with practically all the independent companies except the Standard Oil Companies; and an offer from Mr. Sinclair indicated a receptive [frame] of mind on Mr. Sinclair's part; and no one else seemed receptive. I do not now recall that he named the companies, but I understood it was practically all of the leading independent companies. He particularly emphasized that he didn't want the Standard Oil in it at all. He dwelt on the fact that the Midwest Company had a monopoly there and he wanted an independent company in there. I do not think he said anything about the Midwest Company being a Standard Oil Company. I knew that it was. My knowledge came from conversations with Mr. Penn, the President of our company, who had been Vice President of the Midwest Company. During our conversation Secretary Fall brought up the question of the disposal of oil. I do not know that it had anything to

do with Salt Creek. Secretary Fall [that ought] I discussed with him the sale of the royalty oil from the Salt Creek field. We did discuss that, I think, but my impression was, we were discussing Teapot Dome. I think later Secretary Fall said that he was discussing the Salt Creek royalty oils. The two had been mentioned and he thought that we were discussing the Salt Creek royalty oils; that is what I understood. I do not know whether there were any considerable quantities of Salt Creek royalty oils belonging to the government. I was not familiar with that. You must remember that my practical knowledge was very limited at that time. I do not know that it is very much more now. I was basing my entire work upon recommendations from Mr. Penn, who was a practical oil man. So what I knew then was a few matters that I had gathered from Mr. Penn and my associates with the oil companies since 1919.

Redirect Examination

The oil structure I mentioned to Secretary Fall as being interested in was the Teapot Dome. My impression
383 was that the oil structure Secretary Fall spoke of [of] contemplating leasing was the Teapot Dome. With reference to the Salt Creek royalty oils, that was an interchange of oil.

Testimony of John B. Kendrick, a witness called on behalf of Plaintiff.

Direct Examination.

I am, and have been for eight years, Senator from the State of Wyoming. The matter of the probable opening of the Teapot Dome was first brought to my attention on the morning of April 7, 1922, through a telegram that came to me from a citizen of Cheyenne, Leslie Miller.

Telegram, Leslie A. Miller to John B. Kendrick (Pl. Ex. 68) offered.

Denver Colo Apr 6

John B. Kendrick
U S S
Washington D C

Will you please go personally to Secretary Interior Fall and make inquiry whether all of teapot navy oil Reserve has been definitely and finally leased telling him if there is any possibility at all of application being considered I would like to make application for lease on a portion thereof stop make

plain to Secretary that myself and my associates could fulfill any reasonable contract we would enter into stop write me at Cheyenne results of your interview Thanks

LESLIE A MILLER

I received that on the morning of April 7th and instructed my secretary, to proceed to the Department of the Interior, submit the telegram to the proper officials and request such information as could be had about the lease and getting a lease for Mr. Miller. My secretary was W. A. Anderson. Mr. Anderson came back and reported. My office sent Mr. Miller a telegram on the same day. On April 14th I got another telegram from Mr. Miller.

Telegram Leslie A. Miller to John B. Kendrick (Pl. Ex. 69) offered.

Cheyenne Wyo 1922 Apr 14 AM 4 56

John B. Kendrick
United States Senate Washington D C

384 Wish you would go now to Secretary Fall tell him myself and associates would like to make working contract with Government on up to six hundred forty acres land in Naval Reserve Number Three on basis that we would operate the land pay expense of operation out of gross oil and divide net proceeds with Government on equal basis in other words regular fifty fifty working agreement stop we would be willing to place fifty thousand dollars in bank to guarantee drilling of first well stop if proposed lease being discussed in press has not been signed with you would use real energy on this proposition of ours thanks

LESLIE A. MILLER

My recollection is that after that telegram came we again appealed to the Interior Department for information, but we did submit the message with a request for its consideration by the Department. As I recall it I had still another message from Mr. Miller.

I had a letter from H. Foster Bain, Director of the Bureau of Mines on April 10th.

Letter H. Foster Bain to John B. Kendrick (Pl. Ex. 70) offered.

Department of the Interior.
Bureau of Mines
Washington

April 10, 1922.

Hon. John B. Kendrick,
U. S. Senate.

My dear Senator:

Secretary Fall has asked me to see that you are supplied copies of all statements given out by this Department with reference to the Teapot Dome.

I am, accordingly, enclosing herewith copy of a press memo. given out under date of April 6.

385 Cordially yours,

(Signed) H. FOSTER BAIN
Director.

There was an enclosure with that letter.

Enclosure in above letter (Pl. Ex. 70A) offered.

Department of the Interior
Office of the Secretary.

April 6, 1922.

Memorandum For The Press:

The attention of the Secretary of the Interior having been called to a Denver telegram published in the New York Globe April 5 relating to some rumored contract for the development of the oil in what is known as the "Teapot Dome," Salt Creek field, State of Wyoming, stated:

The Interior Department, in behalf of the Navy, has been causing investigations to be made extending over a period of many months' time with relation to what are known as Naval Oil Reserves Nos. 1 and 2 in California and Naval Oil Reserve No. 3 in the State of Wyoming.

Very interesting data has been obtained with reference to the depletion and prospective depletion of the oils contained in these different reserves. It has been found necessary for the protection of the Government and the Navy against very heavy losses, to cause rapid drilling of offset wells in many instances, and the general physical conditions have

caused the serious consideration of a permanent policy to bring about the conservation of these oils for future Naval needs.

The policy already determined upon in some instances has been to secure steel or other tankage at proper places, selected by the Navy, for the storing of fuel oils from the Naval Reserves.

386 It is well known to the Navy Department and to all oil men that the loss through evaporation, etc., of fuel oil in steel and other tankage is less than one per cent in ten years. A policy is being rapidly developed along the lines just spoken of. As yet, no definite contracts have been made along these or any other lines, for the development, use, storage, or any other purpose, in either Naval Reserve No. 1 or No. 2 in California, or No. 3, known as the "Teapot Dome", in Wyoming.

I received that letter, as I recall, on April 10, 1922. If I am not mistaken I had a previous copy of the enclosure from the press reports given out several days before.

At the time of the receipt of this letter I didn't know that the lease for Teapot Dome had already been executed. I also received from the Interior Department a copy of the memorandum dated April 13th (Pl. Ex. 78). I am uncertain whether it was sent to me through the Department officially or whether it was handed to my secretary.

I also received a communication from Governor Brooks of Wyoming, dated Casper, April 14th, signed Rocky Mountain Oil and Gas Producers Association by B. B. Brooks, President. My impression is that I received that about the 15th.

Telegram, Brooks to Kendrick (Pl. Ex. 71) offered.

Casper Wyo Apr 14 1922

Hon John B. Kendrick
United States Senate Washington DC

At a meeting of the Rocky Mountain Oil and Gas Producers Association held in this city today a resolution was unanimously adopted protesting against the drilling and development of Naval Reserve Number three known as Teapot Dome and the reported letting of a private contract to Harry Sinclair or any other person or corporation for the following reasons there is no present market or outlet for the present pro-

duction of oil stop the present production of oil does
387 not affect this naval pool stop the oil is not adapted to
Naval uses nor is there any present Naval requirement for additional oil stop this association is opposed to the letting of contracts for the development of government oil reserve by private arrangement and without opportunity for general competitive bidding stop furthermore the proposed additional production will seriously increase the already overproduction of crude in this territory and result in continued reduction of prices of crude oil to the loss of the producers the state of Wyoming public schools good roads and national reclamation fund also the proposed drilling of the Teapot Dome means transporting that oil from the state of Wyoming in its entirety whereas if produced in the future and when actually needed it will be refined in this state and we deem the present proposed development and withdrawal not in harmony with purpose of original withdrawal or the policy of the leasing law stop the Rocky Mountain Oil and Gas Producers Association includes in its membership fully ninety five percent of the producers and more than ninety five percent of the production in the state stop the Association urges upon the Wyoming delegation immediate action to prevent the consummation of the proposed contract affecting the Teapot Dome stop immediate action is necessary.

Rocky Mountain Oil and Gas Producers Assn.

By B. B. Brooks, Pres.

My recollection is that I acted on this as I had with the previous communications. I submitted it to the proper authorities, at least to the officials of the Department of the Interior, for their consideration through my secretary, Mr. Anderson. I sent Governor Brooks a message on the 15th.

On the 13th of April, six days, as I recall, after the first message that I received from Mr. Miller, I introduced in the
Senate a bill providing for royalties from the Naval
388 Oil Reserve to accrue to the State of Wyoming. That
was my first act in connection with these reports. On the 15th I introduced a resolution.

Senate Resolution No. 277, offered.

Whereas, There have recently appeared in the public press statements purporting to have been authorized by the Department of the Interior to the effect that the Secretary of the

Interior and the Secretary of the Navy are negotiating with private parties for the operation of lands included within Naval Reserve No. 3, Wyoming No. 1, withdrawn by executive order of the President dated April 30, 1915, known as Teapot Dome:

Therefore, Resolved, That the Secretary of the Interior and the Secretary of the Navy are hereby requested to inform the Senate if not incompatible with the public interests, whether such negotiations are pending, and if so, the names of all parties, the terms and conditions of all proposed operating agreements, and whether opportunity was given the public for competitive bidding for the operations of these lands, or whether it is proposed to award a lease or other operating contract or agreement for the entire area in one person, corporation or association."

That resolution was passed at that time. As I recall, I first got a copy of the lease on the Teapot Dome on the 18th of April. I am a little uncertain as to whether the first information came directly to the Senate or whether it was the first indirect information came through the public press.

Cross Examination.

I recall that after I introduced the resolution of April 15th, which has been offered in evidence, and after it has been passed, Acting Secretary Finney of the Interior Department and Secretary Denby sent a communication to the
389 President of the Senate in response to that resolution. That occurred, as I recall, on the 18th of April. Refreshing my recollection about the matter from Plaintiff's Exhibit No. 63, from which it appears that on April 21st Acting Secretary Finney and Secretary Denby addressed the Senate through the President, I fix the date. The statement I made was that the press report was given the 18th, and three days later the information reached the Senate.

(Plaintiff's Exhibit No. 63 is the official communication received from the Navy and Interior Departments in response to my resolution on April 21st.

Deposition of WILLIAM A. ANDERSON, a witness on behalf of Plaintiff.

Direct Examination.

I live at Long Beach, California, and have lived there since November, 1923. I was secretary to Senator Kendrick from

June 1, 1920, until November 1, 1923, and as such stationed in Washington. I remember the receipt by Senator Kendrick, or by me as his secretary, of a telegram from Leslie A. Miller on April 6th or 7th, 1922. I identify Plaintiff's Exhibit No. 68 as that telegram. I am quite sure it came on the morning of the 7th.

After taking it up with the Senator, at his direction I went to the Department of the Interior with it. First, I called on Judge Finney and request was made there to give it consideration, and Judge Finney said that it was not a matter that he was handling and that I would have to see the Secretary. I was referred by Judge Finney to the Secretary. Judge Finney gave me no information in answer to this telegram. I then went to the Secretary's office and Secretary Fall was not available then. I talked to Mr. Safford, Administrative Assistant to the Secretary. He gave me no information that a lease had been signed. He stated, in substance, that no lease had been signed, that the Secretary would be glad to consider any proposition that Senator Kendrick's constituents desired to submit.

I identify the telegram, Plaintiff's Exhibit No. 69, as having been received at the office of Senator Kendrick. I identify Dr. Bain's letter, Plaintiff's Exhibit No. 70, and the enclosure, as having been received on April 10th by
390 Senator Kendrick.

At my first visit to the Interior Department after April 6, 1922, I requested that Senator Kendrick be kept informed of anything that was done. I either received in person at the Secretary's Office, or through the mail at Senator Kendrick's office, I cannot state which, the memorandum of April 13th (Pl. Ex. 78). Up to April 15th, the date Senator Kendrick introduced the resolution in the Senate, neither he nor I had received any information as to the execution of oil leases. Senator Kendrick's office first got a copy of the Mammoth Oil Company lease, as I recall it, about April 29th. I am not positive as to that, however. I remember the correspondence with Hon. B. B. Brooks. I remember the statement for the press which was given out by the Interior Department for release on April 19th, and the communication to the President of the Senate by Judge Finney and the Secretary of the Navy in answer to Senator Kendrick's resolution of April 15th. The memorandum for the press was made public a day or two before the reply was transmitted to the Senate.

Deposition of FRANK W. MONDELL, a witness on behalf of plaintiff.

Direct Examination.

I am Director of the War Finance Corporation in Washington. I was for 26 years a Member of Congress from the State of Wyoming, and in 1922 Republican Floor Leader of the House of Representatives.

On the 16th of April, 1922, I received a telegram from Ex-Governor Brooks of Casper. Pursuant thereto I went to the Interior Department, found that the Secretary was not there and then called upon Assistant Secretary Finney. I learned that the Secretary had gone to his ranch in New Mexico.

I handed Mr. Finney the telegram that I had received from Governor Brooks and asked what he knew about the matters that the telegram referred to, and particularly as to whether a contract had been executed providing for the development of the Teapot Dome area. He replied that there had been negotiations with regard to that matter going on for some time, conducted principally by the Secretary; that he had had comparatively little to do with it except as he was called in
391 in an advisory capacity on certain points. I do not recall just what he said, but he gave me the impression that he was not wholly certain that a lease had been signed and delivered, that a lease was in force. I think he did not say that a lease had not been signed; I am not sure that he said that one had been, but I left with the impression that it was not altogether certain that the matter had been fully settled by an executed and delivered document. I am quite sure that he did not say to me at that time that a lease was in force; in fact, I know that he did not because he rather left me with the impression that it was possible that the matter had not been fully concluded, although I do not think he said that in so many words. Judge Finney agreed to forward Governor Brooks' telegram and a letter to Secretary Fall.

I should say that about April 19th a press statement was given out that appeared in the press. It was very soon after my talk with Secretary Finney. At an interview later than the one referred to I asked Secretary Finney if he would have any objection to my seeing a copy of the lease that had been under negotiation and that it was known at that time had been signed. Mr. Finney rather hesitated. He said that he was not certain that he had any authority to give out the lease, and, while I cannot say that he refused to let me see a copy of the lease, at least I did not see the lease in the Secretary's

office. Refreshing my memory from the telegram sent to Mr. Brooks on April 25th, I had apparently not seen a copy of the lease of Teapot Dome, although without this telegram to refresh my memory I should have said that it was a little earlier than the 25th that I finally saw the copy of the contract in the office of the Secretary of the Navy, but evidently it was following that date, and my recollection now is that after talking with Secretary Finney about the matter, about the 18th or the 19th, I was under the impression that there was a possibility of Secretary Fall's returning or that the Department would receive definite instructions with regard to giving out copies of the contract. In the absence of any such instructions coming to my knowledge, I said to Secretary Finney that I thought I should talk with the Secretary of the Navy in regard to the matter, which I did.

392 As a result of my representations to the Secretary of the Navy he did give me access to the contract and I read it in his office. I suggested that the best way to inform the public with regard to the contract was to publish the contract and suggested that in my opinion it would be well to have the contract mimeographed and copies given out at once. Between April 25th and April 27th I did get copies. I think it was on the afternoon of the 26th I suggested that copies should be made and on the morning of the 27th they were delivered. I know the last talk I had with Admiral Robison in regard to the matter was in the early part of the afternoon and that the next morning I received some 25 or 30 mimeographed copies of the contract. I had also had a talk with Admiral Robison about giving out the contract. Secretary Denby referred me to the Admiral as the one who was familiar with the contract and its provisions.

Cross Examination.

I do not recall just what Secretary Denby said, but what was said gave me the impression that the Admiral had been connected with the negotiations and was familiar with the details of the contract, and I was further impressed with his familiarity with it when I came to talk with him. From April 1st to April 15th, when I received Governor Brooks' telegram I was quite busy, so busy that I would not have known about the matter unless some one had been disposed to go to the trouble to call my attention personally to the matter. I might not have heard rumor and general discussions.

Testimony of B. B. Brooks, a witness called on behalf of Plaintiff.

Direct Examination.

I was formerly Governor of Wyoming. I reside at Casper, Wyoming. I am engaged in the oil business to some extent, and have been for about ten years at Casper, where the principal office is. I am President of the Rocky Mountain Oil and Gas Producers Association and have been since its organization some five years ago.

I cannot recall the exact date when I first learned of the possible development of the Teapot Dome, but it was
396 early in April, 1922, through the newspaper reports. After learning about it I sent communications to Washington on that subject. I immediately called a meeting of the Directors of the Rocky Mountain Oil and Gas Producers Association. There was a full discussion of the possible leasing of Teapot Dome. A telegram was formulated from the association to the delegation in Congress and to Secretary Fall, as I now recollect.

Telegram, Brooks to Fall (Pl. Ex. 72) offered.

Casper Wyo April 14 1922

Hon A B Fall
Secretary of the Interior Washington DC

It is reported here that the Department has arrived at an agreement for drilling Naval Reserve number three Teapot Dome this state stop the undersigned Rocky Mountain Oil and Gas Producers Association comprises over ninety five percent of the producers of this territory and it without information as to the proposed drilling stop if matter is not definitely concluded the association desires opportunity to submit a showing in opposition to proposed agreement stop please wire present status of negotiations or agreements stop this wire is sent as a result of meeting of the association held in Casper today for purpose of considering this matter

ROCKY MOUNTAIN OIL AND GAS
PRODUCERS ASSOCIATION.
By B B Brooks Prest

I think I got no direct reply from Secretary Fall. I got a telegram from Mr. Finney, the Acting Secretary.

Telegram, Finney to Brooks (Pl. Ex. 73) offered.

Washington, D. C. April 15, 1922.

To Hon. B. B. Brooks,
Casper, Wyoming.

Answering your wire of April fourteenth, Secretary Fall temporarily out of city, but your protest received through Mr. Mondell will be transmitted to him.

(Signed) FINNEY, Acting Secretary.

I do not seem to have any letter either from Secretary Fall or Secretary Finney. I sent identical telegrams to
394 Senator Warren and Senator Kendrick and Representative Mondell on April 14th.

Letter, Mondell to Fall, dated April 15, 1922, (Pl. Ex. 74) offered, enclosing a telegram in the same words as Plaintiff's Exhibit No. 71, and adding

At your convenience I should be pleased to know what is contemplated in regard to the matters referred to, with such statement as you care to make touching the same.

Letter, Finney to Mondell (Pl. Ex. 75) offered.

April 15, 1922.

Hon. F. W. Mondell,
House of Representatives.

My dear Mr. Mondell:

This is to acknowledge receipt of your letter of April 15, 1922, transmitting a telegraphic protest signed by Honorable B. B. Brooks, of Casper, Wyoming, president of the Rocky Mountain Oil and Gas Producers' Association, protesting "against the drilling and development of Naval Reserve No. 3, known as the Teapot Dome."

This is a matter which is being considered personally by Secretary Fall, and I am transmitting your letter and the protest for his consideration. I believe that when the general policy of the Navy and Interior Department with respect to development of this reserve are fully matured and made

known, many of the objections stated will disappear, and that it will be found to the best interests not only of the people of the State of Wyoming but of the country generally.

Respectfully,

E. C. FINNEY, Acting Secretary.

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395 Letter Finney to Fall (Pl. Ex. 76) offered.

April 15, 1922.

Hon. Albert B. Fall,
Three Rivers, New Mexico.

Dear Mr. Secretary:

I enclose herewith communication from Representative Mondell, embodying a telegraphic protest by B. B. Brooks, of Casper, Wyoming, president of the Rocky Mountain Oil and Gas Producers' Association, against the development of the Teapot Dome, and copy of my answer thereto.

I am advised that a similar letter was written by Mondell to Secretary Denby, whose reply was in somewhat similar terms to those in my letter.

As a matter of interest, I also inclose copy of S. 3457, introduced by Senator Kendrick, on page 3 of which you will note he proposes to grant to the State of Wyoming 5 per cent of the royalty from oil and gas in the Teapot Dome.

Sincerely,

FINNEY.

Letter Mondell to Denby (Pl. Ex. 77), same language and quotation as letter of Mondell to Fall, Plaintiff's Exhibit 74, offered.

Letter Denby to Mondell (Pl. Ex. 78) offered.

15 April 1922.

My dear Mr. Mondell:

I am in receipt of your letter of this morning, transmitting the protest of the Rocky Mountain Oil and Gas Producers Association, signed by the Honorable B. B. Brooks, former Governor of Wyoming, and requesting to be informed what is

contemplated in regard to the opening of the Teapot
396 Dome and other matters referred to in that protest.

In reply, I can inform you that this matter is being handled by the Secretary of the Interior, in person. He has kept me informed as to the general plans, and I am able to assure you that they are not open to the objections included in the protest you have received, and that they are intended to accomplish definite improvements in the situation with respect to oil in the State of Wyoming.

I should prefer, however, inasmuch as the entire matter has been handled by the Secretary of the Interior, that he give you all detailed information.

Sincerely yours,

EDWIN DENBY.

My recollection is that the first positive information we had that a lease of the Teapot Dome had been executed and delivered was in a telegram from Mondell, dated April 22. It was quite a time after that, I would say about the latter part of April some time, we received a copy of the lease.

I was then engaged to a certain extent as an oil operator and the membership of our organization represented the operators in the Rocky Mountain region. My company would have been interested in the development of the Teapot Dome. We didn't have any opportunity to bid. The other operators in our association didn't have any opportunity to bid as far as I know.

Cross Examination.

I was interested in several different companies personally. The principal one was the Consolidated Royalty Oil Company of Casper; and also the Western Exploration Company of Casper. The Consolidated was capitalized for $5,000,000,
4,000,000 share issued. When I refer to whether I
397 had an opportunity to bid I refer more directly to the Western Exploration Company; that is the drilling company in which I am interested. It is located as Casper, Wyoming, and has a capital of $2,000,000. It was hardly my idea that that company would consider bidding for leases for the entire reserve, but they would have been very glad to have bid on part of the acreage.

Testimony of LESLIE A. MILLER, a witness called on behalf of Plaintiff.

Direct Examination.

I live in Cheyenne and am at present in the marketing end of the oil business. I am President of the Aero Oil Company. I have been engaged, more or less, in the operating end of the oil business, as a stockholder of various corporations for about eight or nine years.

I first heard of the probable leasing of the Teapot Dome about the 5th or 6th of April, 1922. I got the information in Denver. I didn't get it from the Interior Department at Washington, or from the Navy Department. After getting the information that the Interior Department was contemplating some action with regard to that reserve I sent a telegram to Senator Kendrick on April 6th. I heard from Senator Kendrick and sent him another telegram on April 14th. I would have been interested in the development of the Teapot Dome, or a part of it, if I had had an opportunity. I could have interested any number of other persons or corporations.

I first learned that a lease had been executed about the 21st or 22nd of April. I learned it through the press. I got no information on that subject from either the Interior Department or the Navy Department.

Cross Examination.

My telegram of April 14th to Senator Kendrick, which is in evidence, embodied the proposition I desired to submit to the Secretary of the Interior and the Secretary of the Navy with respect to leases on Teapot Dome. That telegram (Pl. Ex. 62) defined my proposal. That was the basis of working to a point. I didn't submit any other proposition. I had no opportunity. After I had learned of the lease I didn't submit any other proposition.

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208 Deposition of JAMES G. DARDEN, a witness on behalf of Plaintiff.

Direct Examination.

I reside at Catonsville, Maryland. I was interested in a quit claim deed of 160 acres in the structure known as the Teapot Dome. I and my associates acquired that title some time in 1920. Subsequent to that acquirement I made a call on Secretary Finney in 1922. The question of a lease of Teapot Dome was then discussed. Secretary Finney re-

ferred me to Secretary Fall. I at the same time called on Mr. Ambrose at that Department and discussed the question of a lease with him. He referred me to the Secretary. As a result of that reference I called upon the Secretary. I said to him, "I understand that you are going to lease Teapot Dome." He said, "Yes, why?" I said, "I thought probably I had a title that was as good as any one's to this property." He said, "Not at all. You have no title and I cannot find any record of any such title." We naturally got to talking back and forth of the controversy. Finally he said, "Why don't you go down and see Daugherty and have a talk with Daugherty?" I said, "Not at all." He said, "Sinclair will settle with you if you have got a claim. He has agreed to settle with all claimants", or made some remark like that, a casual remark. I said, "No, I will not do that." We got to arguing, naturally, because we like each other, and one thing brought another, and I left. After about a week or ten days I went up to see Mr. Daugherty. This was a month or two before the public announcement of the lease to Mr. Sinclair. It was some time in the Spring of 1922.

Cross Examination.

I don't think it was as late as April 15th that I had that conversation. I think it was some time in March. It was some time in the latter part of March as I remember it. I had been going to see Mr. Finney off and on for three or four years about this property and I was in to see him very often. When I heard from gossip that this property was to be leased through different oil people, I went to Mr. Finney and Mr. Finney said I had no lease. He said, "You have no right whatever, but I direct you to Mr. Fall", and Mr. Fall said I had no rights. I all the time claimed I had a valid
399 title and I later attempted to assert that title and brought suit with reference to it and never doubted I had a good title to the property there. Mr. Fall didn't say to me that whoever leases the property is to take care of the claims, without mentioning names; he mentioned Mr. Sinclair's name, because Mr. Dougherty and he thought I knew Mr. Sinclair and that is why he did it. Mr. Fall didn't mean anything at all except to get rid of me. In addition to that he stated to me that whoever leased the property would take care of the claims. That was about it; whoever got it.

Deposition of JAMES C. CRAWFORD, a witness on behalf of plaintiff.

Direct Examination

I reside in Washington, D. C.; am an attorney at law. I know Albert B. Fall. I called upon Mr. Fall about February 1922, as well as I can remember, to make inquiry about leasing the Teapot Dome, or any part of it.

I asked the Secretary whether there was any possibility of leasing the Teapot Dome, or having it developed on behalf of the Government in any way. He replied that he had been considering that proposition and had concluded he would offer it for development, but that he was not going to offer it publicly because he did not want to be embarrassed by a lot of irresponsible oil companies and individuals applying to him for a lease. He also stated that he thought it would be best to offer it to two or three responsible companies who would develop it and in connection with its development would be willing to undertake the construction of a pipe line which would involve, I think he said, fifteen or twenty million dollars to connect with some point on—I do not remember whether he said the Missouri or the Mississippi River. As a result of his statement I communicated with some friends of mine who were financially responsible in Denver, Colorado, and as a result of that we thought it would be best to associate ourselves with a larger operating company, we having only a small company of our own. We talked to Mr. Lufkin and also to Judge Beaty, Chairman of the Board and President of the Texas Company, and some other officers whom I don't recall. From that it developed that Judge Beaty came to see Secretary Fall about the matter.

400 Cross Examination

I was not representing at first the Producers and Refiners Corporation nor Mr. Kistler. I was only representing myself in seeing the Secretary. I was a practising lawyer in Washington. I was in the Department of Justice on oil litigation for a number of years and I was very familiar with what might happen in these particular cases. I had not been with the Department of Justice for a number of years. I had not heard that there was any leasing then contemplated with anybody. I just went down there to find out about it as it had been my custom to do.

Testimony of JOHN MCFADYEN, a witness called on behalf of plaintiff.

Direct Examination.

I live in Casper, Wyoming. I am Manager for the Ohio Oil Company, Rocky Mountain District, and have been since 1912, all of that time located at Casper, except a while we were in the Big Horn Basin. I am familiar with the Salt Creek Field and the Teapot Dome field. The Ohio Oil Company is classed as one of the independent companies. It was not affiliated with the Standard Oil Company. It had no proposition from the Interior Department with respect to Teapot Dome. The Ohio Oil Company would have been interested in a lease of the Teapot Dome if it had been given an opportunity. As General Manager I suppose they would have submitted a proposition if they had had an opportunity.

Cross-Examination.

I do not think the Ohio Oil Company would have considered the lease that was here given at all. It could not have considered making a lease as favorable to the Government.

Deposition of JOHN W. HARRELD, a witness on behalf of plaintiff.

Direct Examination.

I am Senator of the United States from the State of Oklahoma, and was such beginning March 4, 1921. I sent a letter on April 14, 1922, to Secretary Denby.

Letter, Harreld to Denby (Pl. Ex. 79) offered.

401 April 14, 1922.

Hon. Edwin Denby,
Secretary of the Navy,
Washington, D. C.

My dear Sir:—

For official purposes I would like to have a transcript of all oil leases executed covering naval reserve lands belonging to the Government since March 4, 1921, giving name of lessee, location of lease, number of acres, and consideration.

Yours very truly,

J. W. HARRELD.

I received a reply dated April 20, 1922, from Secretary Denby.

Letter, Denby to Harreld (Pl. Ex. 80) offered.

The Secretary of the Navy,

Washington, April 20, 1922.

My dear Senator:—

Replying to your inquiry of April 14, wherein you request information concerning the oil leases executed with regard to the naval reserve lands belonging to the Government since March 4, 1921, the following data are submitted.

The Executive order transferring the care, custody and operation of the naval reserves to the Department of the Interior was signed May 31, 1921, and since that date the Navy Department is not in a position to give the details of leases that may have been executed. However, between the dates March 4, 1921, and May 31, 1921, it appears that two leases became effective, as shown below:

Lease No.: Visalia 09312.

Delivered: April 19, 1921.

To: Consolidated Mutual Oil Co.

Date of Lease: February 16, 1921.

Located at: $S\frac{1}{2}$ $NE\frac{1}{4}$ and $S\frac{1}{2}$ $N\frac{1}{2}$ $NE\frac{1}{4}$ Sec. 28, T. 31 S., R. 23 E., M. D. M. 120 acres.

Back royalty paid to the Government, $171,664.38.

402 Lease No.: Visalia 09305.

Delivered: March 31, 1921.

To: Buena Vista Oil Co.

Date of Lease: August 23, 1920.

Located at: Two wells in $N\frac{1}{2}$, $SE\frac{1}{4}$ Sec. 32, T. 31 S., R. 24 E.

Back royalty paid to the Government, $234,606.71.

I trust that this information will serve your purpose. It is quite incomplete, of course, but accurate details as to the

leases that have been entered into since May 31, 1921, can only be obtained from the Department of the Interior.

Sincerely yours,

EDWIN DENBY

Hon. J. W. Harreld,
United States Senate.

Deposition of EDWIN S. BOOTH, a witness on behalf of plaintiff.

Direct Examination.

I reside at Baker, Montana; am an attorney at law; have been for about thirty-three years. I was Solicitor for the Department of the Interior approximately from June 1921, to April 1923. The Solicitor of the Department of the Interior is an appointment of the Department of Justice; the Department of Justice details the person appointed to that position to act in the Interior Department. It is a statutory office. I was appointed to that office by the President of the United States. I was not asked to draft a contract of lease between the United States and Sinclair or the Mammoth Company. I was not asked to pass upon any such paper as Solicitor. No assistant or anyone under me, to my knowledge, was asked to draw or pass upon any such paper. I never learned officially prior to the execution of the lease that the lease of Teapot Dome was in contemplation. I heard that they were contemplating a lease of Teapot Dome, or it was being thought of maybe, a month or six weeks before I learned of it officially. My recollection is no one in the Department mentioned it to me, but Colonel Darden [tole] me he heard they were going to lease it. I cannot be positive of that, but I heard it talked about. I learned that the lease had been made of the Teapot Dome the day before
403 bids were opened for the California Naval Reserve contract, which was finally awarded to the Pan American Company. I first saw the lease perhaps a week or ten days after I learned of it officially. I cannot fix that with any degree of definiteness.

I recall Secretary Finney talked with me about Mr. Ambrose of the Bureau of Mines wanting some aid in drafting some provisions of the oil lease and asked who, in my judgment, he had better get, and I told him Mr. Williamson, as I recall. I cannot be positive. Mr. Williamson did quite a bit of that work and did it for the Bureau of Mines, and he came

in and submitted to me, as I recall, a couple of sections or clauses. This was possibly the Pan American contract. However, it was so indistinct I would not want to be positive.

Cross-Examination.

I heard that there was a lease in contemplation some time before the Pan American contract was awarded and about the day that was awarded I first learned there had been a lease. It is possible that some other attorney in the Department of the Interior may have had a knowledge of the Teapot Dome lease prior to my knowledge and I not have knowledge at the time he did. Some other attorneys in the Department may have had to do with the preparation of the lease.

Redirect Examination.

The Secretary might have called on any attorney in the Department, of which there are probably 150. There were 28 in the Solicitor's Office; others in the Land Office, and each branch had some attorneys connected with it, and the Secretary might have called on any one of them.

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404 Deposition of JOHN FRANKLIN SHAFROTH, a witness on behalf of plaintiff.

Direct Examination.

I am Lieutenant Commander, United States Navy, at present attached to U. S. S. Seattle. I was connected with the Bureau of Engineering of the United States Navy beginning about April or May, 1920. About July 1, 1920, I was assigned to duty in connection with fuel oil. At that time Commander H. A. Stuart was in charge on behalf of the Navy of the petroleum reserves. Commander Stuart was formerly in the Bureau of Engineering, was then made a Special Aide about that time to the Secretary for duty in connection with the reserves. I had charge of fuel in the bureau and my office and Stuart's office were in the same room so I was in fairly close contact with what was going on. When Stuart was away I would act on matters not of major importance and if I was not fully cognizant of the policy being followed in any particular case I would refer the gentleman to Stuart. I saw the letter of May 11, 1921, from Secretary Fall. (Def. Ex. "B") It enclosed a proposed draft of an Executive Order dealing with the reserves. I do not remember any other draft with it. The Executive Order, or one of the papers that came to the office with it, bore the ini-

tials "ECF" which we remarked were those of Assistant Secretary Finney.

I had discussions of the proposed Executive Order with Stuart and with Admiral Griffin, as a result of which numerous changes were made in the draft. The draft as changed was submitted to Admiral Griffin and by him to Assistant Secretary Roosevelt. I remember certain langauge about a trusteeship in some of the drafts, to the effect that the Interior Department was to act as trustee for the Navy Department in connection with the naval reserve land. The final draft of the Executive Order was one in which I collaborated with Stuart. That final Draft differed from the one sent from the Interior Department originally.

The first lease in Reserves 1 and 2 after the Executive Order was signed was for 22 wells to Mr. Doheny and Mr. McMurray—offset wells in the N½ of Reserve 1. From that time until the time I went to sea duty I heard no serious discussion of proposed leases of naval reserve lands.
405 From time to time there were proposals from various people to make leases in all reserves, but there was no serious proposal entertained by the Department to my knowledge. In 1921 Rear Admiral J. K. Robison succeeded Rear Admiral R. S. Griffin as head of the Buerau of Engineering. Shortly after Admiral Robison became Chief of the Bureau of Engineering, and subsequent to a discussion with the Assistant Secretary of the Interior, Judge Finney, concerning leases on Naval Reserve No. 1, Admiral Robison called me in his office and said to me that neither I nor Commander Stuart were to go into the Interior Department again, and that he would conduct all dealings for the Navy Department with the Interior Department. I remarked that I thought that was a very peculiar order, and he said that Secretary Denby had returned from a conference with Secretary Fall and had made up his mind to have both Stuart and myself detached from the Bureau of Engineering and ordered to sea. Before that, I made the remark to Admiral Robison to the effect that I thought the order was a very peculiar one, and didn't Secretary Fall while he was about it want me ordered to sea and out of Washington? He replied that I was not far wrong, and that when Secretary Denby had returned from a conference with Secretary Fall he had made up his mind to hame me sent to sea, but that he, Admiral Robison, had explained to Secretary Denby that neither Stuart nor I had done anything which merited detachment, and that our only offense had been that we were too zealous in looking after the

Navy's interest in the Reserves in accordance with the policy of the previous administration. From that time on I had no official dealings with any member of the Interior Department, in connection with the petroleum reserves.

I have seen Secretary Fall at some of the hearings that took place in the Interior Department on private claims on Naval Reserve land, but had no conversation with him concerning the reserves.

Early in April 1922, I left the Department in Washington and went as Aide to Admiral Cole of the Special Service Squadron. Up to that time I had not heard from any one in government service of any intention to lease Reserve
406 No. 3. There had been numerous inquiries in regard to a lease, but the inquiries were invariably informed that it was not the policy of the Department to grant any lease on Reserve No. 3. Many of these replies were given verbally by me or by Commander Stuart. I had heard nothing about a lease to Mr. Sinclair, nor did I hear of this lease until after I joined the Special Service Squadron at Panama on April 29th.

Regarding the Executive Order when it was under consideration I prepared a draft of a letter concerning it addressed to Secretary Fall, which I took to Admiral Griffin and then to Assistant Secretary Roosevelt and finally to Secretary Denby. Secretary Denby said that the question of retaining the Reserves solely under the jurisdiction of the Navy Department was not open to discussion; that the Reserves would be transferred to the Interior Department, that is, the administration of the Reserves would be transferred to the Interior Department. That was perhaps a week before the order was signed. The draft of letter was prepared for his signature, and after reading it he refused to consider the question of signing it, and directed me to take same back and prepare a letter in consonance with the views of transferring the administration of the reserves to the Interior Department.

Cross-Examination.

I know that Admiral Cole asked that I be assigned to him. Admiral Robison was my superior officer in all these matters I have been speaking about. Admiral Cole asked me if I would come with him on his station some time in March 1922. I was detached from the Bureau before April 17th. I arrived in Panama on the 29th. I sailed from New York, I believe, the 18th, and spent a few days in New York prior to

that. My impression is I was detached from the Bureau of Engineering some time around the 5th. It may have been about the 13th. The orders for my detachment were issued prior to the 17th.

Letter, Finney to Tabor (Pl. Ex. 81) offered.

407 Department of the Interior

Washington

November 28, 1921.

Mr. N. M. Tabor,
1120 Grant Street,
Denver, Colorado.

Dear Mr. Tabor:

Answering your letter of November 11, 1921, stating that you would like to obtain an oil lease upon a part of the naval reserve in Wyoming, I have to advise you that some investigations as to the situation of this reserve are now under way, but unless they show a need for immediate drilling, it is the disposition of the Department to hold the reserve intact for the present.

Respectfully,

(Sgd) E. C. FINNEY
First Assistant Secretary

As rewritten in the Secretary's office.

Letter, Jos. W. Clarke to Department of the Interior (Pl. Ex. 82) offered.

Jos. W. Clarke
Attorney at Law
Emmet Block

Leadville, Colorado,

February 16, 1922.

Department of the Interior,
Washington, D. C.

Gentlemen:

Will you kindly let me know if there is any disposition on the part of the Government to lease petroleum lands reserved

for the benefit of the Navy. If so, will you send me copies of the regulations governing the leasing of the same.

Yours respectfully,

JWC J'' (s) JOS. W. CLARKE

Letter, Senator Samuel B. Nicholson to Secretary Fall (Pl. Ex. 83) offered.

United States Senate

Committee on Mines and Mining

March 27, 1922.

Honorable Albert B. Fall,
Secretary of the Interior,
Washington, D. C.

Dear Mr. Secretary:

I am today advised by Mr. Joseph W. Clark of Leadville, Colorado, who is a very good friend of mine, that he wrote to your office under date of February 18th, asking that he be advised if there was any disposition on the part of the Government to lease petroleum lands reserved for the benefit of the Navy and if so to be furnished with copies of the regulations governing such leases. He states that he has received no acknowledgment of his letter, and I shall appreciate it very much if you will look into this matter and give me the information asked for by him, which I shall be very
308 glad to transmit to him.

Sincerely yours,

NDC (s) SAMUEL D. NICHOLSON

Letter, Albert B. Fall to Joseph W. Clark (Pl. Ex. 84), offered.

Department of The Interior

Washington

March 30, 1922.

Mr. Joseph W. Clarke,
Attorney at Law,
Leadville, Colorado,

Dear Mr. Clarke:

I regret the delay in answering your letter of February 18, making inquiry with reference to the leasing of naval pe-

troleum reserves, and requesting copies of regulations applicable thereto. Your letter was mislaid and only called to my attention by my assistants yesterday.

The naval petroleum reserves in California are being handled entirely by this Department and some offset leases have been made thereupon under a general policy, but only with reference to specific cases, i. e., we are endeavoring to protect the corpus of the property as much as possible, and are not developing the same more rapidly than necessary; consequently, have only been granting leases or permits for offset wells to protect the Government property against encroachment of private owners.

There are no specific regulations applicable to the leasing of such lands.

Respectfully,

(Sgd.) ALBERT B. FALL
Secretary.

Letter, Albert B. Fall to Senator Samuel D. Nicholson (Pl. Ex. 85) offered.

Department of the Interior
Washington

March 30, 1922.

Hon. Samuel D. Nicholson,
United States Senate.

My dear Senator:

I am in receipt of your letter of March 27, 1922, advising me that Mr. J. W. Clarke, of Leadville, Colorado, wrote me under date of February 18, concerning leasing of petroleum lands reserved for the Navy.

I regret the delay in answering, but the letter was not called to my attention until yesterday.

The naval petroleum reserves in California are being handled entirely by this Department, and some offset leases have been made thereupon a general policy, but only with reference to specific cases, i. e., we are endeavoring to protect the corpus of the property as much as possible, and are not developing the same more rapidly than necessary; consequently, have only been granting leases or permits for offset

wells to protect the Government property against encroachment of private owners.

I have advised Mr. Clarke in accordance with the foregoing.

Respectfully,

(Sgd.) ALBERT B. FALL,
Secretary.

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409 Letter, C. D. Applin to Department of Interior (Pl. Ex. 86) offered.

K. & W. C. Erickson Co., Realtor
212 Plymouth Building,
Minneapolis, Minn.

February 25th, 1922.

C. D. Applin, Mgr.
Department of the Interior,
Washington, D. C.

Gentlemen:

Kindly send us detailed information relative to Oil Leases on the Teapot Structure, Wyoming, which may be available for leases from the Government at this time.

Yours truly,

/s/ C. D. APPLIN.

Letter, E. C. Finney to C. D. Applin (Pl. Ex. 87) offered.

Department of The Interior.
Washington

March 9, 1922.

Mr. C. D. Applin,
212 Plymouth Building,
Minneapolis, Minnesota.

Dear Mr. Applin:

The so-called Teapot Structure in Wyoming is included in what is known as a naval petroleum reserve, and at the present time no leases have been granted therein or orders or regulations issued, offering the land for leasing. Am not

able at this time to give you any further information with reference thereto.

Respectfully,

(Sgd.) E. C. FINNEY.

Letter, Patrick Sullivan to E. C. Finney (Pl. Ex. 88) offered.

Tuesday March 28th, 1922.

Hon. E. C. Finney,
First Assistant,
Secretary of the Interior,
Washington, D. C.

Dear Judge:

Since returning from Washington I have decided to write you in the matter of oil placer mining claims owned by myself and associates, subject to the title of the United States, situate in the so-called Teapot Structure, or Field, Natrona County, Wyoming. The list of holdings is as follows:

• • • • •

My associates and I acquired these claims in good faith, believing that in case the withdrawal offer affecting the structure is abrogated by order of restoration or otherwise, our claims would be considered, the same having been initiated prior to the date of the withdrawal order.

It being my information that Department contemplates opening up the field through such procedure and in such
410 manner as may be for the best interests of the Government, and believing that my associates and I will be in a position to comply with the requirements of the Department in all respects, I am writing to ask that in any disposition of these lands by the Department we who are residents of this County in which the field is located, be given an opportunity to appear and present in full our reasons for believing that we should receive the right to develop the land.

Very truly yours,

Patrick Sullivan.

Telegram, Pat Sullivan to E. C. Finney (Pl. Ex.89), offered.

1922 Apr 29 AM 12 40

A524A 36 NL
Casper Wyo 28
Judge E. C. Finney
First Asst Sec Dept of Interior Washington DC

Believing you may have overlooked my letter regarding mining claims owned by me on Teapot Structure Natrona County Wyoming am wiring request that you advise me in the matter as promptly as meets with your convience.

PAT SULLIVAN.

Letter, E. C. Finney to Pat Sullivan (Pl. Ex. 90), offered.

Department of The Interior
Washington

April 29, 1922.

Hon. Pat Sullivan,
Casper, Wyoming.

Dear Senator:

Answering your wire of April 29, I have to advise that I am unable to find any letter from you regarding mining claims on the Teapot structure, Wyoming. I recall that you mentioned some interest in a location in the reserve which, while you realized did not offer any legal basis for a patent or a preferential lease under the oil-leasing act, you thought should be regarded as an equity in the event leases were authorized upon the reserve. However, as you know from the press reports, the matter of developing the Teapot reserve in connection with a pipe line to the Missouri River, was taken up by Secretary Fall with the Mammoth Oil Company and others, with the result that on April 7, an agreement was entered into between the Secretary of the Interior, the Secretary of the Navy, and the Mammoth Oil Company covering the entire reserve.

As to the details of the negotiation, I am not advised, and I inclose a copy of the contract for your information.

Sincerely,

(Sgd.) E. C. FINNEY
Acting Secretary.

Inclosure 1926

Letter, J. K. Robison to Hon. P. H. Kelly (Pl. Ex. 91), offered.

614619-690-6-F 24 Mar 1922

My dear Congressman:

411 On Monday morning Congressman French of the House Appropriations Committee called me on the telephone and requested me to furnish certain information relative to the operation of the Naval Petroleum Reserves.

As you doubtless know by an Executive Order of the President, dated May 1921, the general operation, conservation and administration of the Petroleum Reserves was turned over to the Secretary of the Interior. In compliance with the provisions of this Order the Navy Department has come to a general agreement with the Department of the Interior relative to the Reserves and the Secretary of the Navy has designated me as his representative to confer with that Department in all matters relating to the Reserves.

In accordance with the general agreement arrived at between the two Departments the Department of the Interior is taking steps to have Naval Petroleum Reserves Nos. 1 and 2 drilled with offset wells in every case where adjacent property is drilled. It has been further agreed:

(a) That the amount of drilling with consequent exhaustion of the Reserves shall be kept as low as practicable without risking the depletion of the Reserve by other parties.

(b) That the equivalent of all royalty oil shall be delivered to the Navy in the form of fuel oil at such points on the Pacific Coast as may be found necessary for Naval use, and that this exchange of crude oil for fuel oil will be effected on as favorable terms as it is possible to obtain. It is presumed that under favorable circumstances and terms arrangements may be made for including points on the Atlantic Coast for the delivery of an equivalent supply of fuel oil to the Navy.

(c) That the equivalent of the royalty oil will be placed in storage at such points as the Navy may designate.

(d) That the Interior Department will exercise its best efforts to obtain for the Navy as large royalties and as favorable terms as practicable by public competition or otherwise.

(e) That the development of Naval Petroleum Reserve No. 3 is to be undertaken only to protect the Government against depletion of the Reserve by other parties.

In connection with this program it has been estimated that the Navy will obtain by 30 June 1923 royalty oil amounting to 592,200 barrels, which will give an equivalent in fuel oil of 567,400 barrels. For the fiscal year ending 1 July 1923, the royalty oil to be obtained is estimated at 1,350,000 which will give an equivalent in fuel oil of 1,286,460 barrels. Under the terms of the agreement this oil will become a reserve—above ground instead of under ground as now.

The following data with reference to the Naval Petroleum Reserves are submitted for your information:

Naval Petroleum Reserves.

	Reserve #1	Reserve #2	Reserve #3
Total withdrawn acres	37,760	30,080	9,480
Title in United States, acres	31,960	11,200	9,480
Patented to Southern Pacific, acres	4,640	15,360	
Patented to others, acres	1,160	3,520	
In litigation (favorable) acres	680		
In litigation (unfavorable) *		960	
Lands on which leases have been granted	145	7,200	
Lands not in dispute and not leased	31,280	3,040	
Leased wells producing oil	12	101	
Leased wells producing gas	1	11	
Wells being drilled	10	11 20	
Wells capped	3		
Estimated contents, barrels	130,000,000	125,000,000	30,000,000 60,000,000
Production, daily, barrels	999	6,082	
Royalty, per cent	33⅓	16 2/3	
Estimated royalties to be obtained in future, per cent	12½ to 25	12 12 12½ to 25	12½ to 25
412 Location	About 300 mi. from San Francisco About 130 mi. from Los Angeles		32 miles from Casper Wyo
Date withdrawn	27 Sept. 1909	27 Sep. 1909	27 Sep. 1909
Withdrawal confirmed	2 July 1910	2 Jul 1910	2 Jul 1910
Date, Naval Reserve	2 Sep. 1912	13 Dec 1917	30 Apr 1915

Naval Shale Reserves

Location	Shale Reserve #1 Colorado	Shale Reserve #2 Utah
Acreage	45,440	98,564
Estimated contents, both reserves, barrels	1,000,000,000 to	10,000,000,000
Patented to individuals, acres	2,560	
In litigation	None	None
Date, Naval Shale Reserves	6 Dec 1916	6 Dec 1916

As to No. 2 Reserve, it is generally admitted that no Reserve as a Reserve now exists and it will be necessary to drill up within a short time the entire Reserve. In order to meet this situation the Department of the Interior is granting leases from time to time to various operators to drill these lands on a royalty basis varying from 12½ to 25 per cent depending upon the production of the individual lease.

Trusting that he above information is that which you desire and assuring you that if there is any further information which I can furnish I shall be glad to do so, I am

Very respectfully,

J. K. ROBISON,
Engineer-in-chief, U. S. N.
Chief of Bureau.

Hon. P. H. Kelly,
House of Representatives,
Washington, D. C.

Telegram, Inland Oil Index to Secretary of Navy (Pl. Ex. 92) offered.

April 6, 1922.

From: Inland Oil Index, Casper, Wyo.
Action: Secnav (as addressed)

Reported here Government has contracted with Sinclair Corporation for development of Teapot Dome Please wire confirmation or denial our expense day press rate.

Inland Oil Index Casper Wyo.
April 6, 1922 238p

Telegram, Secretary of Navy to Inland Oil Index (Pl. Ex. 93) offered.

U. S. Naval Message
Official Business

From Secretary of the Navy
Date 7 April 1922
To Inland Oil Index Casper, Wyo.

Matters connected with development of Naval Petroleum Reserves are being handled by the Secretary of the Interior

Navy Department has made no contract for development of Teapot Dome.

SecNav

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413 Telegram, Peter Q. Nyce to E. C. Finney (Pl. Ex. 94) offered.

1922 Apr 14 AM 344

A78A 56 2 Extra NL
Great Falls Mont 13

Honorable Edward C. Finney
First Assistant Secretary of the Interior
Washington D C

If consistent please advise by wire collect care Park Hotel here whether Tea Pot Dome Naval Reserve Natrona County Wyoming has been opened for development if it has with whom and if not we should like to suggest a plan whereby we will develop and operate this property for the benefit of the Government.

PETER Q NYCE, Park Hotel.

Telegram, E. C. Finney to Peter Q. Nyce (Pl. Ex. 95) offered.

Washington, D. C., April 14, 1922.

Peter Q. Nyce,
Park Hotel,
Great Falls, Montana.

Answering your wire thirteenth. General policy for disposition and conservation of oil in Naval Reserves, including Teapot, has been agreed upon, but at present not in position to give out details. Secretary Fall in west and nothing further can be done or considered during his absence.

FINNEY, Acting Secretary.

Letter, H. J. Sinnott to J. K. Robison (Pl. Ex. 96) offered.

House of Representatives
Committee on the Public Lands
Washington, D. C. April 17, 1922.

Admiral J. K. Robison,
Chief, Bureau of Engineering,
Navy Department,
Washington, D. C.

My dear Admiral Robison:

I would be glad if you could furnish me with the following information regarding the Naval Petroleum Reserves:

(1) The date of withdrawal acts of each of the three Reserves—Nos. 1 2 and 3.

(2) The total acreage in each of the Three Reserves.

(3) Total amount of private holdings in each one of the Reserves.

(4) The total acreage disposed of since March 4, 1921.

(5) Total amount of public lands yet available in each of the Reserves for leasing development or other disposition.

(6) What if any disposition has the Department in contemplation with reference to any one of the three Reserves in the immediate future.

(7) Lands embraced in the Sinclair contract regarding the Teapot Dome Reserve No. 3, in Wyoming.

(8) What lands if any remain for leasing or development contracts in the Reserve No. 3, Wyoming.

(9) What lands if any are yet subject to leasing or development contracts in Naval Reserve No. 1, California.

414 I should also be glad to have any data as to the total amount of oil production from these reserves from the Government lands, and character of any offset wells, depth of wells, thickness of sand, daily production of wells, on lands which are immediately adjacent to the lands offered for lease, the purpose being for leasing and development; any maps or Geological data that may properly go with the lands subject to offer.

With best wishes, I remain

Yours very truly,

/s/ N. J. SINNOTT.

Letter, J. K. Robison to N. J. Sinnott (Pl. Ex. 97) offered.

19 April 1922.

My dear Mr. Sinnott:

Your letter of April 17th, requesting certain information regarding the Naval Petroleum Reserves, has reached me and I am very sorry to say that I am unable to give satisfactory answers to several of your questions. As you know, the President, on 31 May 1921 signed an executive order transferring the care, operation and preservation of these reserves to the Department of the Interior. Since that date I am not able to give all details of what has transpired. However, I submit what information that I have, as follows:

	No. 1	No. 2	No. 3
(1) Date withdrawn	27 Sept. 1909	27 Sept. 1909	27 Sept. 1909
Withdrawal Confirmed	2 July 1910	2 July 1910	2 July 1910
Date, Naval Reserve	2 Sept. 1912	13 Dec. 1912	30 Apr. 1915
(2) Total acreage	37,760	30,000	9,480

Referring to question (3) et seq. of your letter, I am not able to give this information but it probably can be obtained from the Department of the Interior.

Regretting that I am not able to supply more of the information desired, I am

Very sincerely yours,

J. K. ROBISON
Engineer-in-Chief, U. S. Navy.

Honorable N. J. Sinnott,
House of Representatives,
Washington, D. C.

Letter, James McClintic to J. K. Robison (Pl. Ex. 98) offered.

House of Representative U. S.
Committee on Naval affairs
Washington, D. C.

April 20th, 1922.

Rear Admiral John K. Robison,
Bureau of Engineering,
Navy Department,
Washington, D. C.

My dear Admiral Robison:

I shall appreciate the courtesy if you can furnish me
415 with the following information:—

Total area of three naval reserves (give answers separately).

Total number of acres and private holdings in each one of the three naval reserves.

Total number of acres that were leased for development since March 4, 1921.

Total number of acres now available for development; contracts leased on royalty basis.

Total number of acres in the St. Clair contract on the Teapot Dome in the naval reserve No. 3 in Wyoming.

Has the Navy any additional contracts in contemplation for development in any one of the three naval reserves?

With my thanks for any trouble you may go to in this connection, I remain

Cordially yours,

(s) JAMES McCLINTIC.

Letter, J. T. Tompkins to James V. McClintic (Pl. Ex. 99) offered.

22 April 1922.

My dear Mr. McClintic:

Replying to your letter of 20 April requesting certain information concerning Naval Fuel Reserves, I have to submit the following:

The acreage of the Reserves is as follows:

No. 1—37,760
No. 2—30,080
No. 3— 9,480

The contract recently executed with the Mammoth Oil Company (Mr. H. F. Sinclair, President) covers Reserve No. 3 entirely.

With respect to the remaining questions in your letter, I am sorry to state that I am not in a position to give you accurate data. This matter, as you know, is being handled by the Department of the Interior and I would suggest that inquiry be made of that Department for this data.

Regretting that I am unable to inform you more fully on the subject, I am

Very sincerely yours,

J. T. TOMPKINS,
Acting Chief of Bureau.

Honorable James V. McClintic,
House of Representatives,
Washington, D. C.

Letter, James McClintic to A. B. Fall (Pl. Ex. 100) offered.

House of Representatives U. S.
Committee on Naval Affairs
Washington, D. C.

April 27, 1922.

The Honorable Albert B. Fall,
Secretary of the Interior,
Washington.

My Dear Secretary:

I herewith enclose copy of a communication which I addressed to Rear Admiral John K. Robison, Chief
416 Bureau of Engineering, Navy Department, together with copy of reply from that Bureau, and which you will find to be self-explanatory.

The courtesy will be greatly appreciated if you are in a position to supply me with the information Admiral Robison was unable to give me and which I understand comes under your jurisdiction.

Yours cordially,

(s) JIM McCLINTIC.

Letter, E. C. Finney to James V. McClintic (Pl. Ex. 101) offered.

May, 2, 1922.

Hon. James V. McClintic,
House of Representatives.

My Dear Mr. McClintic:

Replying to your letter of April 27, addressed to the Secretary, inclosing copy of your letter of April 20 to Rear Admiral John K. Robison, and his reply regarding the Naval Petroleum Reserves:

I enclose a table which gives most of the information requested in your letter to Admiral Robison. I am not advised as to whether or not the Navy has in contemplation any additional contracts for development in the Naval Petroleum Reserves.

Respectfully,

(sgd) E. C. FINNEY,
Acting Secretary.

Telegram, A. B. Fall to E. C. Finney (Pl. Ex. 102) offered.

1922 Nov 6 Pm 4 49

Three Rivers NMex 6 159P

Finney
First Assistant Secretary Interior Department
Washington D C

Am returning proofs and memoranda having no stenographer here will ask you prepare report for me using your judgment making it not longer than last using Bain and my ad interim reports might refer to fact advertise for bids royalty oil think unnecessary go into details naval oils as we merely cooperating with Navy * * *

FALL.

Telegram, A. B. Fall to C. V. Safford (Pl. Ex. 103) offered.

Three Rivers N Mex 1045 A April 16 1922

C. V. Safford
Personal Interior Department Washington DC

Notify Sinclair best immediately furnish security company bond in view Congressional agitation

ALBERT B. FALL.

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417 Telegram, C. V. Safford to A. B. Fall (Pl. Ex. 104) offered.

April 18, 1922

Hon. A. B. Fall,
Three Rivers,
New Mexico.

Assured matter of bond will receive prompt attention as you direct.

SAFFORD.

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418 Deposition of EDWARD C. SHERMAN, a witness on behalf of plaintiff.

Direct Examination

I am Project Manager, Bureau of Yards and Docks, United States Navy. I have charge of sections handling fuel oil storage, Marine Corps projects, radio and water supply. I have been and am familiar with the projects for building reserve oil storage under the contract with Mammoth Oil Company of April 7, 1922, the supplemental contract, and the contract with Pan American Petroleum and Transport Company of April 25, 1922, and supplements. The [apprxoimate] estimate of the construction to be done at Portsmouth, New Hampshire under the Mammoth contract per the latest figures we have is $1,000,000. The approximate amount to be expended for storage at Melville, R. I., was estimated to cost about $1,000,000. No accurate estimate was made. We guessed at it. The project at Boston Harbor was estimated to cost about $6,000,000. The project at Yorktown, Virginia, known in the contract as D, E, F and G, was to be divided into four units. The tentative estimated cost of these four projects, or units, is $7,000,000; about $28,000,000 for the four. Referring to the Pan American contract, that covered two specifications for construction at Pearl Harbor, one known as Contract 4650, for 210,000 tons of fuel oil; the other one, known as 4800 provided for seventeen 150,000 barrel fuel oil tanks, one 80,000 barrel fuel oil tank, nine 225,000

gallon gasolene tanks, fifty-six 25,000 gallon lubricating oil tanks, and a building to enclose the last group; a small barracks building, fire protection, fence and miscellaneous equipment. I would like to elaborate my answer on the first part. Contract No. 4650 included the storage which I mentioned and an oil wharf. The first one was estimated to cost about $3,500,000 for the construction part only. That is the only part which I have any cognizance of. The second contract, No. 4800, was estimated to cost about $4,380,000, for construction only. And in addition to that there is the cost of the fuel oil to fil the tankage.

Specification by Bureau of Yards and Docks, known as No. 4802 for the construction at Portsmouth, N. H., under the supplemental contract of February 9, 1923, Exhibit C of the Bill, offered.

419 The project at Portsmouth is about 92% completed I think.

Cross-Examination.

Some of the matters of which I have knowledge and concerning which I was asked I cannot answer because they are matters which I am not allowed to give publicity to because the war plans of the Navy are secret and some of the storage plans are within the war plans. Until actual contracts are made which makes the matter public, the quantity of storage of fuel, among other things, is considered extremely confidential.

The original leasing contract to the Mammoth Company did not give any details or really give any project to be constructed at Portsmouth. The matters I have been testifying to are in the supplemental agreement of February 9, 1923, Exhibit "C" of the Bill of Complaint and there are there the four projects concerning which I testified. No work whatsoever has been done on any outside of the Portsmouth project except we have had the contractor for the work at Portsmouth make some preliminary investigations at Boston to find out if we could build a wharf at Governor's Island. We prepared specifications for a second project at Melville, but they were never shown to the contractor. The Bureau of Yards and Docks of the Navy prepared the plans and specifications for the Portsmouth project. So far as the work has progressed on that project the Bureau of Yards and Docks has had this to do with the construction: The officer in charge of the work at the Yard is, of course, legally under the Commandant, but he was designated as the officer in

charge by the Chief of the Bureau of Yard and Docks to whom any appeals from his decisions would be made. In other words, he did really represent the Chief of the Bureau of Yards and Docks on the work. That is, the Bureau had supervision of the construction; approved any detailed drawing submitted by the contractor and made additional detailed drawings over and above those furnished with the specifications in the first place, and exercised full control over construction. So that all of the construction that was done on the Portsmouth project was done under the direct control and supervision of the Navy Department. It has all
420 had the full approval of the Navy Department in accordance with the specifications which were prepared by the Navy Department.

It is my understanding that the Mammoth Oil Company has furnished the money to its subsidiary or associate, the Sinclair Refining Company, to pay for the construction work at Portsmouth. That construction is on property of the United States at the Navy Yard. The work is nearly 92% completed; that is, 92% of the estimated total cost has been expended. Until the plant is completed it is of little value, but if it is completed, it will be worth what it would cost. Early in March it was estimated that if the work were completed under existing sub-contracts the remaining work would cost about $138,000. If work were stopped under the existing contract and the job finished under new sub-contracts this would cost about $172,000.

I assume that the construction is at a point advantageous for storage of oil for the government for emergency use. The location was not selected by the Bureau of Yards and Docks, but I think by the General Board of the Navy. I am not familiar with the practices of other governments in the matter of oil storage, but it is commercially customary to store oil in steel storage tanks. The government does store oil in that manner in other places all over the United States and its possessions, wherever the government has need for oil. This method of storage in steel tanks is employed by the United States and is found to be efficient.

These estimates of cost I have given are made outside the contracts. There is no estimate of cost given in the contracts. The projects I have referred to and the contracts with relation to them are not in the original lease, but in the supplemental agreement of February 9th. All of the specifications for the projects were prepared by my department, under my immediate direction. Our department stopped supervising

some time ago under the direction of Admiral L. E. Gregory, Chief of my Bureau. My instructions were verbal. My supervision is merely office work. The construction work at the yard is supervised by the public works officer. We found that the officials of the contractor were satisfactory to deal with; I mean the Mammoth Oil Company, although the Sinclair Refining Company, Eastern Division, was the one we particularly dealt with because they were designated
421 by the Mammoth Oil Company to handle the project. We dealt directly with the Sinclair Refining Company though we furnished the specifications to the Mammoth Oil Company before they designated the Sinclair Company to do the work.

The sub-contracts were all approved by my Bureau so that all through the original contracts and specifications and the sub-contracts, the work itself, progressed with the approval of the Navy Department. And not only that, but the bids had been submitted to us in order that we might issue instructions as to the awards on the sub-contracts. The Navy Department had very full control.

The reason that the contractor has not finished the work is because the Navy Department has failed to approve orders for materials which had the effect of stopping work. We approved the orders as long as we were allowed to and then we had to stop and orders that came in subsequent to that date were held without action. This held up all subcontractors from going ahead and performing except so far as they could proceed under the approval that had been given. The sub-contractors could not proceed.

I think that the original contract provided that the contractor should obtain bids on about 90% of the work on subcontracts, and that has been done. The contractor may have done a small amount of work with its own force. We did not require them to take bids on all of the work. It was around 90%. Whether the work done directly by the contractor is purely supervisory work or some small additional work I do not know. I know that it had little to do with the materials.

Our Department approves the bills and sends them to the Interior Department. They were approved by our Department until the lawyers stopped them. I do not know about the payments.

Deposition of THEODORE ROOSEVELT, a witness on behalf of plaintiff.

Direct Examination

I reside at Oyster Bay, Long Island; am Assistant Secretary of the Navy and have been since March 5, 1921.

Secretary Denby handed me the draft of a proposed Executive Order about a month or two months after I became Assistant Secretary and about two weeks or ten days before the order was finally signed. I do not know where Denby procured the draft he handed me, but I understood it
422 was prepared in the Interior Department. It was sent, in addition to being given to me, to Admiral Griffin, then Chief of the Bureau of Engineering.

It was not signed by President Harding in the form in which it first came to me. Admiral Griffin and I and a number of the younger officers, I believe Commanders Stuart, Shafroth and Gobey, worked on the revision of the draft. As a result certain changes were made, after which I took the draft directly to Secretary Fall. The changes that were put into the order were changes reserving for the Navy a final say in the matter of oil leases on the reserves. The original draft turned over the administration of the oil properties to the Interior Department without recourse. After talking with Admiral Griffin I went to Secretary Denby and told him I thought the property should not be turned over to the Interior at all. He told me the matter was all decided by the President, Secretary Fall and himself. Later Admiral Griffin submitted to me certain suggestions, providing in one way or another that the Navy should retain control over the disposition of the oil properties. The final form was not settled between Admiral Griffin and myself. I took to Secretary Denby the various drafts submitted to me. I went over them with him and he agreed to a modification of them. That modification was identical with the final clause of the Order as it now stands. He said to me, "If you can get Fall to agree to this modification, then it will be all right with me." I took the Order with the modification to Fall, who agreed to it. I then took it to President Harding who signed it. I have no knowledge of any written communication by Denby or Fall to President Harding concerning the order. I took none. I just took the Order to the President. I had no personal contact with either of the contracts of April 7th with Mammoth, or April 25th with Pan American. I did not know either of them was in contemplation prior to its exe

cution. I knew nothing about either or them until they had been executed.

The plan for Naval Reserve Oil storage decided upon by the War Plans Division and approved by the General Board contemplated the erection at various places of approximately 45,000,000 barrels of reserve oil tankage. That plan was taken as the basis of the work that was being done under those two contracts, and their supplements.

The approximate cost of building 45,000,000 barrels of oil tankage is $67,500,000 for the actual tankage. We figure roughly a dollar and a half per barrel of tankage. To fill it with oil, which was a part of the plan, would cost the value of the oil put their in addition. Now, the value of oil is fluctuating. At the period that I remember first figuring this matter we took our oil at a dollar a barrel. At this time, for example, it would be about $1.40 per barrel. You can see, therefore, that we cannot come to an absolutely definite determination on exactly what the cost of that 45,000,000 barrels of tankage plus the fuel oil which we wish to put in would be. Under these contracts and their supplements it was intended to go on and on building this tankage and filling it with fuel oil.

Cross-Examination.

The tankage that was to be provided under this and the supplemental contracts was to be all of the 45,000,000 barrels of which I have spoken, Judge, if the oil fields developed a sufficient quantity of oil to do it, and I know that it was the opinion of Admiral Robison and Secretary Denby that they would, because I can remember hearing them say so. I cannot state what proportion of the total tankage contemplated was to be done under that contract. The construction of tankage was in consonance with the approved plan for reserve tankage of the Navy Department, [approvied] I think in 1919, which plan contemplated storage of fuel oil to the capacity of the tankage. The original plan did not contemplate the storage of oil taken from the Naval Oil Reserves necessarily. It was simply a plan that the Navy Department wished to have put in force at some time of having so much reserve tankage built at various places all over our country and over our dominions wherein reserve oil could be stored. The plan did not specify the origin of the fuel oil that was to go into the tankage, but merely that we would like to have that tankage. The original plan was adopted by the War Plans Division in 1919. In 1919 or 1920 it was reviewed and

approved by the General Board. Subsequently, I be-
424 lieve late in 1922, the General Board and War Plans Division modified it to conform with the Limitation of Armaments Treaty. Certain tankage was placed at Hawaii which would otherwise have been placed in the Philippines. In addition to those mentioned in my direct examination I think conferred with Naval Aide Commander Warren about the draft of the Executive Order. All agreed to the necessity of a modification. Each one had a particular thought as to how the modification should be worded. I worded one. The phraseology finally adopted was not the phraseology contained in any one of the individual suggestions. It was a composite. I think that in talking the drafts over with Secretary Denby he changed certain words in it himself and that it was then recopied. I suggested to Denby that one of the modifications be adopted. He discarded one for one reason and another for another reason, but then one of them was taken and he wrote in certain changes he thought necessary. Then I got that recopied. It is very difficult for me to recall what part I took in the making of the composite form finally adopted. There were some phrases in the final form which I would have preferred to have had in a different way. We argued over it and talked about and Secretary Denby said "This is the form to which I will agree".

Secretary Fall agreed to the form submitted without changing it at all and without hesitation. The President made no objection to the draft I took him and signed it in the form submitted. I reported to Denby what had happened when I took the order to Fall.

I can give you the reason I became convinced it was better to have the Interior Department participate in these leases. They were that the Interior Department had the administrative force with which to handle these matters and the Navy Department did not, and that after the modification had gone in the Navy Department still retained control of the disposition. I believe that is what my judgment was based on at the time. I did not refer so much to the experience of the Interior Department and the men of experience in that department with respect to oil, as I did to the fact that they had people who knew about oil wells being drilled and had inspectors who would go out on the grounds, men who had oil lands for their life work, and the Navy was not possessed of the same class of skill
425 and experience.

Redirect Examination

I had no thought at the time of leasing these reserves as a whole and taking out the oil. Nothing that Denby said to me indicated that he had any idea of leasing the property as a whole. My conception of the matter was that it was to take care of offset drilling that might be necessary, and all that I knew about was the offset drilling in Reserve No. 2. That had been a matter of general discussion.

Recross Examination.

The reason I say I had no knowledge of these leases or the negotiations for them was that I was engaged in other work, Limitation of Armaments Conference and appropriation matters. I was so busily engaged that there was no opportunity for me to come in contact with the negotiations or with anything in relation to the leases.

Executive Order of Withdrawal of Naval Petroleum Reserve No. 3, Wyoming #1 (Plaintiff's Exhibit No. 106) offered.

Order of Withdrawal

Naval Petroleum Reserve No. 3, Wyoming No. 1.

It is hereby ordered that all lands hereinafter described and heretofore forming a part of Petroleum Reserve No. 8, withdrawn on July 2, 1910, from settlement, location, sale or entry and reserved for classification and in aid of legislation under the authority of the Act of Congress approved ~~June 25, 1910 (36 Stat., 847), entitled "An act of Congress approved~~ June 25, 1910 (36 Stat., 847), entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August 24, 1912 (37 Stat., 497), shall hereafter constitute Naval Petroleum Reserve No. 3, and shall be held for the exclusive use or benefit of the United States Navy until this order is revoked by the President or by Congress. To this end and for this public purpose the order of July 2, 1910, is modified and the withdrawal of that date is continued and extended insofar as it affects these lands.

Sixth Principal Meridian

T. 38, N., R. 78 W.,

Sec. 2, SW.¼ of NE.¼, W.½, W½ of SE¼;

Sec. 3, all;

Sec. 4, NE^1_4, NE^1_4 of NW^1_4, N^1_2 of SE^1_4, SE^1_4 of SE^1_4;

Sec. 9, E^1_2 of NE^1_4, NE^1_4 of SE^1_4;

Sec. 10, all;

Sec. 11, W^1_2 of NE^1_4, W^1_2, SE^1_4;

Sec. 14, all;

Sec. 15, N^1_2, N^1_2 of SW^1_4, SE^1_4 of SW^1_4, SE^1_4;

Sec. 22, NE^1_4, NE^1_4 of NW^1_4, E^1_2 of SE^1_4;

Sec. 23, all;

Sec. 26, NW^1_4 of NE^1_4, N^1_2 of NW^1_4.

T. 39 N., R. 78 W.,

Sec. 16, NE^1_4 of SW^1_4, S^1_2 of SW^1_4, SW^1_4 of SE^1_4;

Sec. 20, E^1_2 of NE^1_4, SE^1_4;

426 Sec. 21, all;

Sec. 22, SW^1_4 of NW^1_4, SW^1_4;

Sec. 27, W^1_2 of NE^1_4, W^1_2, SE^1_4;

Sec. 28, all;

Sec. 29, E^1_2, E^1_2 of NW^1_4, N^1_2 of SW^1_4, SE^1_4 of SW^1_4;

Sec. 32, N^1_2 of NE^1_4, SE^1_4 of NE^1_4;

Sec. 33, N^1_2, N^1_2 of SW^1_4, SE^1_4 of SW^1_4, SE^1_4;

Sec. 34, all;

Sec. 35, SW^1_4 of NW^1_4, W^1_2 of SW^1_4, SE^1_4 of SW^1_4.

WOODROW WILSON,
President.

30 April 1915.

Stipulation as to the testimony of REPRESENTATIVE FITZGERALD.

If called by plaintiff, said witness would testify: I was Chairman of the Committee on Appropriations of the House of Representatives on May 1, 1917. Said Committee presented to the House bill H. R. 3971, 65th Congress, First Ses-

sion, which became the Deficiency Appropriation Act of June 15, 1917, Chapter 29, 40 Stat. 182. When this bill was under consideration by the House I stated to the House "That the details with regard to the appropriation of $1,500,000 for fuel oil storage construction had been submitted to the committee, but that the projects upon which this sum was to be expended were not printed in the bill and not made public because of war reasons against disclosing the circumstances of the construction of this storage."

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427 Stipulation as to the testimony of REPRESENTATIVE SHERLEY.

Stipulation that if witness were called by plaintiff he would testify: I was Chairman of the Committee on Appropriations of the House of Representatives which presented H. R. 13086, which became the Deficiency Appropriation Act of November 4, 1918, Chapter 201, 40 Stat. 1020. On October 16, 1918, while the House had that bill under consideration, I made the statement to the House "The estimate of $165,000 for the construction of fuel oil storage at Pearl Harbor had been submitted to the Committee but had been omitted from the bill as reported because it was agreed that this item could be subsequently taken up in the Naval Appropriation Bill for 1920."

Stipulation as to the testimony of ADMIRAL PARKS.

Stipulation that if called by plaintiff Admiral Parks would testify: I became Chief of the Bureau of Yards and Docks, United States Navy, on or about January 12, 1918, and remained such until early January, 1922. It was my duty as such chief to have charge of construction of fuel depots for the United States Navy and the preparation and submission to Congress of estimates of appropriations for the establishment of fuel depots, including the construction of tanks for the storage of fuel oil, gasoline and other petroleum products for the use of the United States Navy.

On October 7, 1918, a subcommittee of the Committee on Appropriations of the House of Representatives was considering the first deficiency appropriation bill, 1919, which became the Act of November 4, 1918, Chapter 201, 40 Stat. 1020. I stated to the subcommittee at that time that the appropriation of $3,275,000 requested for coal and fuel oil

storage in the bill was to complete the project for tank construction at Yorktown, Virginia.

In the consideration of the Naval Appropriation Bill for 1920, which became the Act of July 11, 1919, Chapter 9, 40 Stat. 131, I submitted estimates for the construction of depots for coal and other fuel in the sum of $805,000. Included in this sum was the amount of $141,000, to pay for the increased cost of a project for storing oil at Pearl
428 Harbor, T. H.

In consideration of the Naval Appropriation Bill for 1921, which became the Act of June 4, 1920, Chapter 228, 41 Stat. 812, I requested the sum of $2,135,000 for depots for fuel, of which sum the amount of $1,000,000 was requested for steel storage tankage for reserve fuel at Pearl Harbor, T. H., and $1,050,000 for the same purpose at Puget Sound.

In the consideration of Naval Appropriation Bill for 1922, which became the Act of July 12, 1921, Chapter 44, Stat. 122, I requested the sum of $1,836,000 for depots for coal and other fuel, including the sum of $126,000 for such use at Melville, R. I.

Stipulation with regard to the testimony of the ATTORNEY GENERAL.

Stipulation that nothing was asked of the Attorney General, or the Department of Justice respecting the legality of the Executive Order or the contract of April 7, 1922 (Exhibit B of the Bill), or the supplemental contract of February 9, 1922 (Exhibit C of the Bill).

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429 Testimony of HAL C. DUNBAR, a witness called on behalf of the Plaintiff.

Direct Examination.

I live at El Paso, Texas; am Cashier of the First National Bank of El Paso. In 1922 I was Assistant Cashier. I produce the account of Albert B. Fall, consisting of five sheets containing certain dates and numbers. Those are the original ledger sheets of Mr. Fall's account from December 22, 1919 to April 28, 1924. They are the original record of deposits and withdrawals kept in a loose-leaf system and worked with an adding machine.

I produce a deposit ticket in that account of October 21, 1922 in the handwriting of Mr. Gonzales, teller of the bank in cage 16; also a deposit ticket of the same account of November 22, 1922, also in Mr. Gonzales' handwriting. In the spring of 1923 Mr. Ulric, President of the Exchange Bank of Carrizozo brought in certain bonds to our bank. Any bonds received by a teller in our bank are turned over to the Mexican Department which handles Liberty Bonds.

(Ledger sheets marked Pl. Ex. 109; deposit ticket of October 21, 1922, marked Pl. Ex. 110; deposit ticket of November 22, 1922, marked Pl. Ex. 111.)

The above testimony was admitted over the objection and exception of defendants and subject to the right reserved to defendants to move to strike same and each item thereof from the record.

There was offered in evidence by plaintiff the ledger account (Pl. Ex. 109) of Albert B. Fall with the First National Bank of El Paso, Texas, being the ledger sheets identified by the witness Dunbar over the objection and exception of the defendants, and subject to the right of the defendants to move to strike the same from the record.

This ledger account (Pl. Ex. 109) was headed as follows:

First National Bank of El Paso Texas

Name: A. B. Fall Address: Three Rivers, N. M. & 1725 Abiz St.

This ledger account was kept in columns across the page as follows:

Old Balance—Date—Checks—Date— Deposits— Date— New Balance.

The column headed "Deposits" in said ledger account contains entries showing that on June 1, 1922, there was deposited to the credit of A. B. Fall $2209; that on October
430 21, 1922, there was deposited to his credit $5082.25; November 22, 1922, there was deposited $15,150 and on June 11, 1923, there was so deposited $25,000 and on June 18, 1923, $671.36. The other items in the account are not material to the issues in this case. The account is practically impossible to reproduce in printing and it is therefore not copied in full. The other items in the account applied to transactions having no relevancy to the issue involved.

431 Testimony of IGNACIO GONZALES, a witness called on behalf of plaintiff.

Direct Examination.

I made the deposit ticket (Pl. Ex. 110) in the usual course of business in the First National Bank of El Paso. I am in charge of the Liberty Bond Department and Mexican money. The ticket is in my handwriting. I made a record of the bonds for which that ticket calls on the books. I produce a sheet from the books which is one of the records of the bank. The record in that books is in my handwriting made on the day of the transaction. Refreshing my memory from the record made by me I find that the numbers of the bonds represented by said deposit ticket are 1144110 to 1144114 inclusive.

The ticket of November 22, 1922 (Exhibit 111) is in my handwriting. I actually received the bonds noted thereon, but do not remember from whom I received them. I made the record of the numbers of them on the day and date they were received. That record is in my handwriting in the book of the bank. Refreshing my memory from this record which I made, the numbers of the fifteen thousand bonds in question are 1222494, 34717, 341786, 341788, 92785, 92786, 923287, 972847, 1214821, 316469, 1222472, 1222473, 1222474, 1222475, 1222476.

Pl. Ex. Nos. 110 and 111 were offered in evidence over the objection and exception of the defendants and subject to the right reserved to defendants to move to strike the same from the record, and were as follows:

Deposited with The
First National Bank
El Paso, Texas.

For A. B. Fall.
Oct. 21, 1922.

Please describe El Paso checks by name of Bank; all other nu name of City where they are payable, listing each one separately and see that they are all endorsed.

	Dollars	Cents
Gold		
Bills		
Silver		
Dollars Cents		

Teller
Oct 21 1922
16

Mex Cy
" Gold
" Silver
Checks
5000 00 L. Bonds
at 100 50 5025
Accrued Interest 61 25
5086 25

(On Reverse)

1st issue
5 a 1000 each
1144110-11-12-13-14

(Pl. Ex. 111).

Deposited with the
First National Bank
El Paso, Texas

For A. B. Fall

Nov. 22, 1922.

Please describe El Paso checks by name of Bank; all others by name of City where they are payable, listing each one separately and see that they are all indorsed.

	Dollars	Cents
Gold		
Bills		
Silver		
Dollars Cents		
Mex Cy		
" Gold		
" Silver	15150	00
Checks		

Teller
Nov 22
1922
16

433 (On Reverse)

15 a 1000

1st issue

Teller
Nov. 22, 1922
16

1st	1st
1222494	153958
340717	50.00
340717	
341786	
788	5th
92785	5272187
	100
923287	
972847	
1214821	
316469	
1222472	
73	
76	
75	
76	

434 Testimony of HARLAN J. SMITH, a witness called on behalf of plaintiff.

Direct Examination.

I reside at Pueblo, Colorado; am Cashier of the First National Bank of Pueblo, and have been for twelve years. That bank has an account with Tres Ritos Land and Cattle Company. I have produced here the ledger sheets of that account, covering from January 17, 1921 to January 17, 1925—11 sheets (marked Pl. Ex. 112). I produce the deposit ticket of October 5, 1922, in that account. It is in the handwriting of L. T. Rule, Assistant Cashier (marked Pl. Ex. 113). I produce a deposit ticket of the same account dated October 23, 1922, which is also in Rule's handwriting. (Marked Pl. Ex. 114). Government bonds deposited under such a ticket would be held by the bank for a period and then be sold in the market.

I produce a memorandum made by some person connected with our bank of a sale of bonds and the bill for the sale of certain bonds by our bank (Memorandum and bill of sale marked as one exhibit Pl. Ex. 115) offered. Witness shown paper marked "Schedule of U. S. Bonds Deposited, Fed-

eral Reserve Bank, Kansas City, Denver Branch, Denver Colorado, by First National Bank, Pueblo, Colorado," dated July 19, 1922 (marked Pl. Ex. 116). I cannot identify this paper. Witness also shown a paper headed "Federal Reserve Bank of Kansas City, Denver Branch, Denver, Colorado. Schedule of U. S. Government Bonds." (marked Pl. Ex. 117). That paper is in the handwriting of some one of our clerks. I cannot say that that came from our institution. I do not know the handwriting on the paper.

Our bank has an account with M. D. Thatcher Estate Company. I produce the record of that account from April 1, 1922 to January 28, 1925, seventeen sheets (marked Pl. Ex. 118). I produce a deposit ticket in that account of July 15, 1922, in the handwriting of Mr. Booth (marked Pl. Ex. 119). I produce the ledger account of M. T. Everhart, Trustee, in our bank, consisting of one sheet, showing the account opened opened May 29, 1922 and closed May 2, 1923. (Marked Pl. Ex. 120). I produce deposit ticket in that account dated May 29, 1922.

435 The above testimony was admitted over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

Plaintiff then offered, and there was received in evidence over defendants' objection and exception, and subject to the right reserved the defendants to move to strike the same from the record, the ledger account of Tres Ritos Cattle and Land Company produced by the above witness, which was kept in the usual form and showed deposits to the credit of Tres Ritos Cattle and Land Company in the First National Bank of Pueblo as follows:

October 5, 1922,	$ 1575.00
October 23, 1922,	20456.88

No other items on said account are material or relevant to the issue in this case, and the account is therefore not copied in full.

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436 Testimony of HARLEY D. SPIELMAN, a witness called on behalf of plaintiff.

Direct Examination.

I reside in Washington, D. C. I am Register of the Treasury of the United States. In answer to subpoena I have

produced coupons due June 15, 1922, on certain bonds of the first three and one-half per cent Liberty Loan issue. I have coupons No. 10, due June 15, 1922 on bonds numbers 1144103 to 1144148.

Under the routine of the Federal Reserve Branch Banks and of the Treasury of the United States, there is a cancellation stamp for each of the Federal Reserve Banks. I know the cancellation stamp of the Federal Reserve Branch of Denver. These coupons bear the Federal Reserve Bank cancellation punch of the Federal Reserve Bank branch of Denver, Colorado. It is cut into the coupon and is distinctive from the cut of other Federal Reserve Banks. In addition to the coupons from the bonds numbered as above mentioned, I have coupons No. 10, due June 15, 1922, from bonds 315,308, to 315,319, inclusive; 570742 to 570749, inclusive; 273,301 to 273,305, inclusive; 1,222,460 to 1,222,465, inclusive; 1,222,493; 1,222,472 to 1,222,479 inclusive; 1,222,528; 1,222,494; 1,214 821; 92 785 and 6; 923,287; 972,847, 8 and 9; 316,469; 340, 717; 341,786; 341,788; 972,823; 972,401; 972;411; 1,222,489; 148,544; 934,653; 782,163 782,191; 782,193 to 782,200 inclusive; 782,301; 782,302, 3, 4, 5, 6, 7 and 8 to 782,350 inclusive; 782,301; to 782350, inclusive 924,735 to 924,739, inclusive; 782,426, and 7; 782,446 to 782,450 inclusive; 924,735 to 924,739 inclusive; all of which bear the cancellation stamp of the Federal Reserve Bank at Denver. There is a stamp "Paid" put on by my office in the regular routine when the coupons come in and that explains that stamp which will be found on the coupons.

437 The coupons produced and identified by the witness and above enumerated were then offered in evidence by plaintiff as a single exhibit (Pl. Ex. 121). All of the said coupons are alike, except as to serial number, "Paid" stamp, date, and stamp of Federal Reserve Bank of Denver. Upon certain of said coupons appears the stamp of the Federal Reserve Bank of Denver, identified by the witness Conway, being a large capital "4"" with the date enclosed therein, and on others appears the stamp of the Federal Reserve Bank at Denver, identified by the witness Conway, being a large capital "U" with the date enclosed. On both of said stamps is also a number showing the clerk who placed said stamp upon said coupons and counted the same. The face of the coupon is as follows:

The United States of America
10 Will Pay to Bearer $17.50
Seventeen Dollars and Fifty Cents
Seal
For Six Months Interest June, 1922
Due on the Fifteenth
on $1000 3-1/2 Per Cent Bond of
Liberty Loan of 1917
Huston B. Teehee
Register of the Treasury 1144111

On the reverse of the coupon is an engraved scroll with the figure 10 in each of the four corners outside the scroll and a stamp giving the date of payment.

There is a peculiarly shaped punch through the coupon somewhat in the style of a letter L.

The above testimony of the witness Spielman and the above Exhibit 121 were received over the objection and exception of defendants, and subject to the right reserved to move to strike the same from the record.

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438 Testimony of ALBERT J. CONWAY, a witness called on behalf of plaintiff.

Direct Examination.

I live in Denver, Colorado. I am Cashier of the Denver Branch, Federal Reserve Bank of Kansas City. Before that I was Assistant Cashier. Pl. Ex. 116 is a coupon remittance letter received by us from the First National Bank of Pueblo on July 21st, bearing their date of July 19th.

(Pl Ex. 116.)

439 Under the practice that has existed since and prior to that date, the various banks in the Federal Reserve District remitted coupons by registered mail on a form supplied by us similar to this. We prepare these forms and furnish them to all Federal Reserve Banks. The coupons come in with this letter prepared by the bank. It is a printed form to be used by the banks. The regular practice when one of these form letters arrived with these coupons is that they are received by the regstered mail division and immediately turned over to the coupon department, and the coupon department hands—the Manager of that department hands the letter to a girl. This girl is supplied with a lettered stamp, which is registered; she immediately stamps the letter

in which the coupons are received, and all of the coupons in that letter, with the same lettered stamp, which bears the number of the letter she is working that day; the letter "C" would be "C-1", and the date. The stamp I am referring to appears in the corner of that letter. I know who used the stamp "C-1, July 21", that is the stamp on that letter identifying the clerk who worked upon it. It was Miss Martha Anderson. We have made search to ascertain her whereabouts and have been unable to locate her.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

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440 Testimony of CHARLES S. THOMAS, a witness called on behalf of plaintiff.

Direct Examination.

I was formerly United States Senator from Colorado and Governor of that state. I know Col. A. E. Humphreys and have known him about thirty years, and have at times acted as his counsel. I fairly well remember the occasion of the sale by him, or by his companies, of a large quantity of oil to the Continental Trading Company. The culmination of the agreement was November 17, 1921. My recollection is I first saw Col. Humphreys with respect to that on the morning of the 15th at the Waldorf Hotel in New York. About noon of that day I attended a lunch down at which a number of gentlemen connected with the matter were present. My recollection is that they were Col. Humphreys, R. W. Stewart of the Standard Oil of Indiana, James O'Neil of the Prairie Oil and Gas Company, Harry F. Sinclair of the Sinclair Crude Oil Purchasing Company and Mr. Harry M. Blackmer, who I think at that time was Chairman of the Board of the Midwest Refining Company. It may be that some others were present, but I cannot recall whether there were any others. At that time we discussed this sale of oil. The object of the meeting was to talk over the matter with respect to the details of the transaction.

Prior to attending this lunch, Colonel Humphreys gave me an outline of an agreement which had been practically agreed to between himself and some of the gentlemen present, and, of course, I had that as a background, so that I had some idea of the matter, and what took place at the

lunch was a review of what Mr. Humphreys had told me. In substance, he had agreed to sell and these gentlemen, or some of them, had agreed to buy thirty million barrels of oil from his company, that is to say the Humphreys Mexia and the Humphreys Texas Oil Companies, to be delivered from half of the output of the oil wells belonging to these two companies. There was an amount of thirty thousand gallons—not to exceed forty thousand—forty thousand barrels, I mean—from the other half if it should yield so much, which was to be reserved from the sale, if more than that, and the contract would be also satisfied by the vendees taking the difference between the amount required by the forty
441 thousand barrels and the surplus, if any. They also arranged for a second contract to be executed at the same time, to take effect upon the performance of the first, which would also be confined to one-half of the output of the wells after the thirty million barrels had been delivered and paid for. I think it was at the dinner that the Colonel suggested that he would like to have it made thirty-three million, three hundred and thirty-three thousand three hundred and thirty-three and one-third barrels, so that the contract would be for the round sum of $50,000,000. At any rate, there was no objection to it. Whether that was made there or at the hotel, I cannot say. There were a number of details with regard to the points of delivery, tankage, the use of oil and gas by the vendees' companies which might be needed for fuel, and so forth, which the vendees might need in the performance of the contract. After these matters were provided for, it was agreed that we would meet the next morning at the Vanderbilt Hotel, at the rooms of Mr. Harry M. Blackmer. I then suggested that if I could see the counsel for these other gentlemen, we could in all probability expedite matters, as I had nothing else to do during the course of the day. One of these gentlemen, I don't remember which, said that while the contract was very large in amount, it was comparatively simple as to detail, and they were quite satisfied that I should prepare the contract in its final form, and it was not necessary to call upon their counsel. Upon appearing that afternoon, I made a memorandum, a complete memorandum, of the various matters which should go into the contract, and the next day about ten or eleven, Colonel Humphreys and Mr. Beaman G. Dawes, the President of the Pure Oil Company, and myself went over to the Vanderbilt Hotel. I there referred to this memorandum—I don't know that I read it—and some other matters of trivial importance had suggested themselves on both sides—purely

matters of detail—and those were all fixed out and I said that I would prepare to make a draft of the agreement, and, I think it was Mr. Blackmer who said, "You will find a stenographer in the next room." Then I arose to go into the other room, when someone of these gentlemen—I think it was Mr. Blackmer—the same people were there—the
442 only addition to the number was Mr. Dawes. I might say that Mr. Dawes' company had shortly before purchased nearly twenty-five per cent of the stock of Mr. Humphrey's company, and, of course, was interested in these contracts. The forty thousand barrels which were reserved from it, he was also interested in. And, as I arose to go into the next room, I think, as I say was Mr. Blackmer, but I am not certain, said, "In this contract, the vendee in the contract will be the Continental Trading Company of Canada." Someone of the others may have said it, and I want to emphasize the fact that I am not certain which one of them it was who said it. It was said in the presence of the others; and Colonel Humphreys then said "How is that, Governor?" "Well," I replied, "that is the introduction of a new factor in the situation," and that I would have to inquire something about this, especially as it was a foreign corporation, where it did business, and so forth, when the statement was made that the Prairie Company, the Prairie Oil and Gas Company, and the Sinclair Crude Oil companies were to guarantee the performance of the contract. My recollection is it was Mr. O'Neil who made that statement. I think Mr. O'Niel said, "We will receive that oil—we expect to pay for it, and we will guarantee the performance of the contract." Well, that was satisfactory to my client, and therefore it was satisfactory to me, so I prepared the first draft of the agreement between them. The first agreement, which was the first of the two agreements, was the one to the Canada corporation. I prepared a draft of both of them, the second being a contract which was to take effect after the performance of the first. That contract was between the two Mexia companies, vendors, and the Sinclair company and the Prairie Company, vendees. After they were typed out in form—but I omitted to state that I asked who would execute this contract for this Canadian company and Mr. Blackmer said that the president of the company would be present the next morning. I don't remember that he said who the president was. I don't remember. The two drafts of the contracts as originally drawn we got [about] noon, and we went over them and some other changes were suggested mostly
443 of a clerical character. I do not think any important change was made, but there were some expressions that

did not suit me exactly, the form of them, and some misspelling. At any rate, a second and a cleaner copy was made and sent to me before the next morning, and we did meet about ten o'clock at the same place. So I was introduced to a gentleman as Mr. Osler. The price that was to be paid was $1.50. That was understood from the start. Mr. Humphreys' statement to me as soon as I saw him after reaching New York was that the contract was for $1.50 a barrel. That is as to the first contract; the second contract provided that the purchase should be on the prevailing rate for crude oil at the time of delivery.

Nothing was said that I can recall as to who constituted the Continental Trading Company, Ltd., nor with respect to its relation with the Standard interests. The next morning when the contracts were executed Mr. Osler sat down to the table after its execution and signed as President of the company. The same gentlemen were present that I have named, Stewart, Sinclair, O' Niel, Blackmer, Humphreys, Dawes, myself and Osler.

Osler reached in his side pocket after signing the contract and brought out a small silver-plated seal and attached it to the contract, and I remarked in substance that that was a very simple way of executing a tremendously big contract, and he said that it was necessary to do them that way sometimes. I think something was said about it was the Standard, but I do not remember very clearly. (Mr. Phillips, President of the Sinclair Crude Oil Purchasing Company produced the executed originals of the contracts, and copies thereof, which it is stipulated are true copies.)

Contract between Humphreys Mexia Company and Humphreys Texas Company and Continental Trading Company, Ltd.

(Pl. Ex. 122) offered.

444 This Agreement, made and entered into this 17th day of November, 1921, by and between the Humphreys Mexia Company, a corporation organized under the laws of the state of Delaware, and Humphreys Texas Company, a corporation organized under the laws of the State of Delaware, both doing business in the State of Texas in compliance with the requirements of the laws of such state, hereinafter called the Vendor, and The Continental Trading Company, Limited, a corporation organized under the laws of the Dominion of Canada and hereinafter called the Vendee.

Witnesseth: That the Vendor, in consideration of the covenants and agreements hereinafter contained, hereby covenants and agree to sell and to deliver in its field tanks in counties of Limestone, Navarro, Kaufman and Titus and other counties of the state of Texas in the vicinity thereof, thirty three million three hundred thirty-three thousand three hundred and thirty three (33,333,333) barrels of crude petroleum of forty-two gallons each, at the rate of fifty per cent (50%) or one half (½) of its production from each field of operations, including such royalty oil as the Vendor can control.

The Vendor further covenants and agrees to sell and deliver as aforesaid to the Vendee during the life of this contract such parts or portions of the remaining fifty per cent of its production of crude petroleum in said localities which they shall not use or require for their own business or for carrying out existing contracts. The amount needed by the Vendor for said purposes shall not exceed forty thousand (40,000) barrels per day.

The Vendor further covenants and agrees that said crude petroleum shall be of commercial merchantable quality, it being understood and agreed between the parties hereto that the vendor shall deliver the said oil hereinabove provided for, when, as and if produced.

The vendor further covenants and agrees to furnish and supply the vendee at cost with water in sufficient quantity for its operations under this contract, to the extent that it may be available.

The Vendor further covenants and agrees with the Vendee to supply it with rights of way, over and across such premises as it may control, for its pipe lines and gathering lines and all necessary sites for pump stations and pump station tanks, free of charge to the vendee.

The Vendor also agrees and covenants to supply the Vendee with gas for the operation of its pumps and other machinery essential to the performance of its agreement, to the extent that it may be available, at such price or compensation hereafter to be agreed upon.

In consideration of the above agreements, the vendee agrees to receive and take said crude petroleum when, as and if produced, at and for the sum of $1.50 per barrel, payments to be made in cash upon the 15th day of each month for deliveries made during the calendar month preceding each payment.

The vendee also covenants and agrees with the vendor with all reasonable diligence to furnish the facilities necessary for taking and receiving this oil as fast as the same is produced hereunder.

It is hereby mutually covenanted and agreed that this contract shall be binding and in force against any and all assigns, and successors of the parties hereto, and when the word vendee is used in this contract it shall apply to the assigns and successors of the vendee and all persons with whom it contracts.

It is hereby mutually covenanted and agreed that this contract shall be binding and in force against any and all assigns and successors of the parties hereto, and when the word vendee is used in this contract it shall apply to the assigns and successors of the vendee and all persons with whom it contracts.

The performance of this contract shall be excused to either party on account of strike, act of God or any other cause beyond their control, during the continuance thereof.

The details of purchasing the oil under this contract shall be controlled by the terms of the Prairie Oil & Gas Company prevailing division order, marked Exhibit "A" and
445 made a part of this contract.

In Witness Whereof, the parties above named have hereunto set their hands and seals of said corporations this ..... day of November, A. D. 1921.

HUMPHREYS MEXIA COMPANY,
By A. V. Humphreys.

Attest:

HUMPHREYS TEXAS COMPANY,
By A. V. Humphreys.

THE CONTINENTAL TEXAS COMPANY, LIMITED,
By [illegible].

We, the undersigned hereby guarantee to the Humphreys Mexia and the Humphreys Texas Companies, and their assigns and successors in interest, the due performance of the aforesaid contract by and on the part of the Continental Texas

ing Company, Limited, of Canada, the vendee, executing the same.

THE PRAIRIE OIL & GAS COMPANY,
By J. E. O'Neil, President.

THE SINCLAIR CRUDE OIL PURCHASING COMPANY,
By H. F. Sinclair.
R. W. Stewart, Directors.

446 I identify that original; the date is in my handwriting. The date is the day it was executed, November 17, 1922. That is the contract between the Humphreys Mexia Company, Humphreys Texas Company and the Continental Trading Company, Ltd. The guarantee which was offered was placed in written form upon that contract and executed at the same time by Mr. Sinclair for one of those companies and Mr. O'Niel for the other.

Contract dated November 17, 1922, between Humphreys Mexia Company and Humphreys Texas Company as vendors and Prairie Oil and Gas Company and Sinclair Crude Oil Purchasing Company. (Pl. Ex. 123) offered.

447 This Agreement, made this 17th day of November, 1921, by and between the Humphreys Mexia Company, a Delaware corporation, and the Humphreys Texas Company, a Delaware corporation, parties of the first part, hereinafter called the vendors, and the Prairie Oil & Gas Company, a Kansas corporation, and the Sinclair Crude Oil Purchasing Company, a Delaware corporation, hereinafter called the vendee.

Witnesseth: For and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

(1) The vendor agrees to sell to the vendee fifty per cent (50%) of all the oil that may be produced from any field or pool in which it now or may hereafter operate, develop, own or control in Limestone, Navarro, Kaufman and Titus counties in the State of Texas and other counties in the vicinity thereof, together with such royalty oil as it can control.

(2) The vendee agrees to purchase the oil covered by the foregoing paragraph when, as and if produced and to pay therefor the prevailing posted market price in the field where produced.

(3) This contract shall continue as long as oil of commercial merchantable quality is produced in commercial quantities from any of the territory herein specified, and shall extend to the assigns and successors in interest of both parties and each and all of them.

(4) This contract is and shall be subject to the contract entered into this date between vendors and The Continental Trading Company, Limited, a Canadian corporation, and shall not take effect until the terms and conditions of said contract are carried out.

(5) The oil covered in this contract includes any oil of commercial merchantable quality that may be produced from existing sands or from sands that may be discovered.

(6) The vendor further covenants and agrees to furnish and supply the vendee at cost with water in sufficient quantity for its operations, to the extent that the same may be available; also to supply the vendee with rights of way over and across such premises as it may control for its pipe lines and gathering lines and all necessary sites for pump stations and pump station tanks, free of charge to the vendee; to supply the vendee with gas for the operation of its pumps and other machinery essential to the performance of its agreement, to the extent that it may be available at such price or compensation hereafter to be agreed upon.

(7) In consideration of the above agreements, the vendee agrees to receive and take said crude petroleum when, as and if produced, payment therefor to be made upon the 15th day of each month for deliveries made during the calendar month preceding such payment.

(8) The vendee also covenants and agrees with the vendor to proceed with all reasonable diligence to furnish and construct the facilities necessary for taking and receiving this oil as fast as same is produced hereunder. And the vendor also covenants and agrees to and with the vendee to proceed with all reasonable diligence to develop and drill its premises, now or hereafter to be acquired for the discovery, production and delivery of said oil.

(9) It is hereby mutually covenanted and agreed that this contract shall be binding and in force against any and all the assigns and successors of the parties hereto, and when the word vendee is used in this contract it shall apply to the

assigns and successors of the vendee and all person with whom it contracts; and when the word vendor is used in this contract it shall apply to the assigns and successors of the vendor and all persons with whom it contracts.

(10) The performance of this contract by either party shall be excused on account of strike, act of God or any other cause beyond their control during the continuance thereof.

(11) The details of purchasing the oil under this contract shall be controlled by the terms of the Prairie Oil & Gas Company's prevailing division order, marked Exhibit "A" and made a part of this contract.

In Witness Whereof, the parties above named have hereunto set their hands and the seals of said companies, this 17th day of November, A. D. 1921.

448

Attest:
Thomas T. Hill,
Secy.

HUMPHREYS MEXIA COMPANY
By A. E. Humphreys

Attest:
Thomas T. Hill,
Secy.

HUMPHREYS TEXAS COMPANY
By A. E. Humphreys

Attest:
J. A. Hollihan,
Secretary

PRAIRIE OIL & GAS COMPANY
By J. E. O'Neil,
President

SINCLAIR CRUDE OIL PURCHASING COMPANY
By H. F. Sinclair
R. W. Stewart,
For the Directors
By George H. Taber, Jr.
President
A. L. Carlton
Secretary.

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449 I identify Pl. Ex. 123 as one of the original contracts executed on that occasion. There was a blank form of division order attached subsequently as the contract provided it should be.

The contract of guarantee (marked Pl. Ex. 124) I identify as one of the original contracts of guarantee executed at that time.

Contract of guarantee (Pl. Ex. 124) offered.

450 We, the undersigned hereby guarantee to the Humphreys Mexia and the Humphreys Texas Companies, and their assigns and successors in interest, the due performance of the annexed contract by and on the part of The Continental Trading Company, Limited, of Canada, the vendee, executing the same.

PRAIRIE OIL & GAS COMPANY
By J. E. O'Neil,
President

Attest:
J. A. Hollihan
Secretary.

THE SINCLAIR CRUDE OIL PURCHASING COMPANY
By H. F. Sinclair
R. W. Stewart,
President
By George H. Taber, Jr.
President
A. L. Carlton
Secretary

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451 I first learned that the oil had been resold by the Continental Trading Company, Ltd., in September or October, 1924.

Cross Examination.

The substantial parts of the agreement had been made before Mr. Humphreys wired me to meet him in New York, so he told me. I was not present at Humphreys' first talk with these gentlemen and didn't know anything about it.

I don't know who constituted the Continental Trading Company, Ltd., except that Mr. Osler appeared there as an officer of it. I did know that the Prairie Oil and Gas Company was interested there in making another contract with Mr. Humphreys to take effect at the close of the first contract and that the Sinclair Crude Oil Company was represented jointly with the Prairie Oil and Gas in the purchase of that remaining oil. I assumed that from the presence of Mr. Sinclair. That purchase was accomplished right there. I do not know

whether Mr. Sinclair or Mr. O'Neil had any other interest than that.

Testimony of A. E. HUMPHREYS, a witness called on behalf of plaintiff.

Direct Examination.

I live in Denver and was connected with the Humphreys Mexia Oil Company and the Humphreys Texas Company. I developed the two fields owned or controlled by these companies in Texas. I began negotiations on the subject of the sale of 33,333,333 barrels of oil with H. M. Blackmer. The final meeting was in New York on November 14, 1921. We had a number of meetings prior to that time, but nothing resulted from them. I met him at 60 Broadway at the office of our Chief Geologist, Mr. Fohs. I was alone with Mr. Blackmer. We discussed the question of the sale and purchase of this oil. After agreeing with Mr. Blackmer on the number of barrels they would purchase and the price they would pay I called Senator Thomas into the matter. We met Mr. Blackmer and these other gentlemen in the room of Mr. Blackmer at the Hotel Vanderbilt and we also met at the luncheon Senator Thomas spoke about. All the parties named, Mr.
452 O'Neil, Mr. Sinclair, Mr. Stewart, Mr. Blackmer and Mr. Dawes were present.

After the agreement arrived at with Mr. Blackmer about the purchase of oil, I telegraphed Governor Thomas to come to New York and laid the matter before him. I told him I had made a deal with Mr. Blackmer for the sale of 30,000,000 barrels of oil at $1.50 a barrel. We met these gentlemen the first day at a luncheon down town. There the contract was discussed, the term etc., arriving at a [conclusions] as to how they would handle the oil, the building or pipe lines, etc. I mentioned the fact to these gentlemen that Governor Thomas was to represent my companies and would help, assist, in the preparation of a proper agreement or contract to cover the whole matter. In the Hotel Vanderbilt Governor Thomas remarked that he would excuse himself and go to the next room for the preparation of the contract, and then it was mentioned by Mr. Blackmer that the contract for the purchase of this oil would be, or should be made with the Continental Trading Company, a Canadian corporation. I turned to the Governor and asked him what he thought about it, as we certainly wanted some security or guaranty. Then the Governor took issue, and he was finally advised by some one present that the contract would be properly guaranteed

and the Prairie was offered for one, the Prairie Oil & Gas, and the Sinclair Crude Oil purchasing Company for the second. I turned to the Governor and remarked to him that the two mentioned companies were entirely satisfactory to me. The Governor then in reply said, "If they are satisfactory to you they are to me," so that closed that incident. It is my recollection Mr. Blackmer was the spokesman at the time this statement was made, but at the stage when the securities were offered, Mr. O'Neil talked for the Prairie and Mr. Sinclair for the Sinclair Crude Oil Purchasing Company. I don't remember that R. W. Stewart took any part save that he might have—my recollection is that he consulted with Mr. Sinclair before Mr. Sinclair volunteered their company as one of the guarantors.

This conversation was the second morning. The day before the arrival of Mr. Osler. We met the first day downtown. The second day we met in Mr. Blackmer's room, is my recollection, and it was at this time that the [that
453 the] Governor asked the question, or Mr. Blackmer turned to the Governor and requested that he make the Continental Trading Company the party of the second part. The third day, the morning of the third day after my arrival in New York, Mr. Osler turned up. That was the first time I had met Mr. Osler, and it developed that he was the president of the Continental Trading Company. It was he who afterwards executed this contract on behalf of the Continental Trading Company. I identfiy Plaintiff's Exhibit 122 as executed by me on the 17th. The Continental Trading Company executed the contract on the 17th. I identify Plaintiff's Exhibit 123 as the second contract to which I have referred, which was executed by me on November 17, 1921, and by the secretary of the company on a later date. We had to take these to Mexia. I carried a copy. Mr. O'Neil carried a copy for the Prairie. I identify Plaintiff's Exhibit 124 as the contract of guarantee executed on the same day to which I have referred in my testimony.

The first knowledge I had of the resale of the oil sold to the Continental Trading Company at $1.50 per barrel to the Prairie and Sinclair Crude companies was something like a year and a half after that. Nothing was said about it on November 17, 1921 by any of these gentlemen in my presence.

Cross Examination.

I had no knowledge who constituted or were interested in the Continental Trading Company other than Mr. Osler.

I know there was another contract executed there the same day, and that one of the parties to that other contract aside from my companies was the Prairie Oil & Gas Company and the other party was the Sinclair Crude Oil Purchasing Company. Stewart and Sinclair represented the Sinclair Crude in making this contract and O'Neil represented the Prairie. I had no knowledge of any other purpose of their being there.

I think the pipe line was commenced down there by the Prairie and Sinclair Crude within twenty-four hours after the contract was signed in New York. I have no recollection as to whether I learned at that time that the Sinclair
454 Crude and the Prairie had purchased the interests of the Continental. It was generally understood that they were to move in and take this oil, but as to whether or not they would purchase it—they were to build the pipe lines and ship this oil. That was the consideration for making the contract and that, I understood, within twenty-four hours; I understood it then.

Testimony of H. L. Pillars, a witness called on behalf of plaintiff.

Direct Examination.

I am President of the Sinclair Crude Oil Purchasing Company. I produce contract of November 17, 1921, between Continental Trading Company, Ltd., Sinclair Crude Oil Purchasing Company and Prairie Oil and Gas Company.

Agreement between Continental, Prairie and Sinclair Crude, dated November 17, 1921. (Pl. Ex. 125) offered.

455 This Agreement, made this 17th day of November, 1921, by and between The Continental Trading Company, Limited, a corporation organized under the laws of the Dominion of Canada, herein called the Vendor, and the Prairie Oil & Gas Company, a Kansas corporation, and The Sinclair Crude Oil Purchasing Company, a Delaware corporation, herein called the Vendees.

Whereas, the Vendor has purchased from the Humphreys Mexia Company and the Humphreys Texas Company, both Delaware corporations, hereinafter referred to as the producing companies, thirty three million three hundred thirty three thousand three hundred and thirty three (33,333,333) barrels of crude petroleum of forty two (42) gallons each, to be delivered and taken as when and if produced at the rate

of fifty per cent (50%) of the production of the producing companies, from each of their fields of production, in the counties of Limestone, Navarro, Kaufman and Titus, and other counties in the State of Texas, in the vicinity thereof, including all royalty oil which the producing companies can control, and including also such portion of the remaining fifty percent (50%) as shall remain after reserving the amount required by the producing companies for their own use and requirements in their business and for carrying out existing contracts, such reservation not to exceed forty thousand (40,000) barrels per day; and

Whereas, the Vendor in purchasing the said oil has covenanted and agreed with the said producing companies to accept and take delivery of the said oil as when and if produced in its field tanks in its said fields of operation, and to proceed with all reasonable diligence to furnish the facilities for taking and receiving such oil as fast as the same is produced, details of the purchase to be controlled by the Prairie Oil & Gas Company's prevailing division order, copy of which is marked "Exhibit A" and is made a part of this contract.

And Whereas, the Vendor has agreed to resell the said oil to the Vendees at and for the price hereinafter stated, and upon the further consideration that the Vendees will carry out and fulfill the above recited covenants on the part of the Vendor.

Now Therefore This Agreement Witnesseth, as follows:

(1) The Vendor agrees to sell and the Vendees agree to buy the said thirty three million three hundred thirty three thousand three hundred and thirty-three (33,333,333) barrels of crude petroleum and to pay therefore, as hereinafter provided, the price of either One Dollar and Seventy Five Cents ($1.75) per barrel or the field price of Mid-Continent crude as posted from day to day by the Prairie Oil & Gas Company less forty cents (40c) per barrel, whichever shall be the higher price, up to but not exceeding a maximum price of Two and One-half Dollars ($2.50) per barrel.

(2) The Vendees agree to accept all deliveries of oil made by the producing companies in their field tanks in the said fields of operation in accordance with the said hereinbefore recited "Exhibit A" until the full amount of thirty three million three hundred thirty three thousand three hundred thirty three (33,333,333) barrels shall have been delivered, and to pay therefor the said price ascertained as in

the next preceding paragraph provided on the 10th day of each month for all oil delivered during the preceding month, payment to be made in United States Currency at the agency of the Dominion Bank of Canada, 51 Broadway, New York City.

(3) The Vendees agree to proceed with all reasonable diligence to furnish the facilities necessary for taking and receiving said oil as fast as the same is produced by the producing companies, hereby indemnifying the Vendor and assuming all the obligations of the Vendor to the producing companies in connection with the purchase and sale of the said oil, except only the cash price thereof payable by the Vendor to the producing companies.

(4) This agreement shall benefit and shall bind the assigns and successors of the respective parties hereto.

In Witness Whereof, the parties hereto have caused this agreement to be executed in triplicate by their duly and authorized officers and their corporate seals to be hereto affixed this 17th day of November, A. D. 1921.

456

THE CONTINENTAL TRADING COMPANY, LIMITED
By M. Osler.
President.

Attest:
The Prairie Oil & Gas Co.
Corporate Seal.
Independence, Kansas.

THE PRAIRIE OIL & GAS COMPANY
By J. E. O'Neil.
President.

Attest:
J. A. Hollihan
Secretary.

THE SINCLAIR CRUDE OIL PURCHASING COMPANY.
By George H. Tabor, Jr.
President.
A. L. Carlson.
Secretary.

Sinclair Crude Oil
Purchasing Company
Corporate seal.
1921
Delaware

457 I was a Director and Vice-President of Sinclair Crude Oil Purchasing Company on November 17, 1921. I was not present when Exhibit 125 was drafted. I first saw it in Chicago in November, 1921. I don't remember the date. At that time the stock of Sinclair Crude Oil Purchasing Company was owned one-half by the Standard Oil Company of Indiana and one-half by the Sinclair Consolidated Oil Corporation.

I think Mr. Sinclair was in Chicago when that agreement was put to the Board of Directors. I didn't discuss it with him before it was adopted. I do not remember that Mr. R. W. Stewart, who I understood was then Chairman of the Board of Directors of the Standard of Indiana, was present when the contract was up for consideration by the Board of Directors. My first remembrance of the contract was when it was handed to me by Mr. Taber, the President of the Company, and then there was a general discussion. I had to do with the Purchase of the Continental Trading Company's interest in that contract for the Sinclair Crude Oil Purchasing Company. I held a negotiation in New York with Mr. H. S. Osler relative to the purchase of the Continental Trading Company's interests under that contract. It was in the Sinclair Building, Liberty and Nassau Streets. I do not remember distinctly as a result of whose statement I went to New York; there was some conversation around at several meetings we had previous to this trip to New York, and, finally, in New York I met with Mr. Osler and negotiated this contract; I do not know where it first came to my attention. On that day in New York a form of contract was agreed upon between Mr. Osler and myself, I representing the Sinclair Crude Oil Purchasing Company, and he the Continental Trading Company. I produce the contract of assignment.

Agreement between Continental Trading Company, Prairie Oil and Gas and Sinclair Crude Oil Purchasing Companies, dated May 26, 1923. (Pl. Ex. 126) offered.

458 This Agreement made in triplicate this 26th day of May, 1923, Between Continental Trading Company Limited a corporation organized under the laws of the Dominion of Canada, hereinafter called the "Assignor" and The Prairie Oil And Gas Company, a corporation organized under the laws of the State of Kansas, and Sinclair Crude Oil Purchasing Company, a corporation organized under the laws of the State of Delaware, hereinafter called the "**Assignees**".

Whereas by agreement bearing date the 17th day of November, 1921 (hereinafter referred to as the contract of November 17th, 1921) The Assignor contracted and agreed with the Humphreys Mexia Company and Humphreys Texas Company, corporations organized under the laws of the State of Delaware, for the purchase of crude petroleum for the price and upon the terms and conditions therein set forth, two originals of which are attached to two original copies of this agreement and a copy thereof is attached to the third original copy hereof.

And Whereas due performance of the said contract of November 17th, 1921 on the part of the Assignor was guaranteed by the Assignees by the agreement of guarantee of which an original is attached to one original copy of this agreement, true copies thereof being attached to the other two originals hereof.

And Whereas by agreement also dated the 17th day of November, 1921, and hereinafter referred to as the "Repurchase Agreement", the Assignees agreed to purchase from the Assignor all Petroleum which the Assignor was bound to purchase from the Humphreys Mexia Company and the Humphreys Texas Company under the said contract of November 17th, 1921 upon the terms and conditions therein set forth.

And Whereas in and by the said contract of November 17th, 1921, it is specifically provided and agreed that the said contract shall be binding and in force against any and all assigns and successors of the parties thereto and that the said contract shall apply to the assigns and successors of the Continental Trading Company Limited referred to in this contract as the Assignor.

And Whereas the Assignor also holds a contract with Western Oil Fields Corporation of Colorado for the purchase of crude petroleum.

And Whereas the Assignor has agreed to assign to the Assignees the said contract of November 17th, 1921 and the said contract with the Western Oil Fields Corporation and to cancel and put an end to the said re purchase agreement for the consideration and upon the terms and conditions hereinafter set forth.

Now Therefore This Agreement Witnesseth that the Assignor in consideration of the sum of Four hundred thousand dollars ($400,000.00) paid to the Assignor by the Assignees, each of the Assignees paying one-half of the said amount, the receipt of which is hereby acknowledged, hath assigned, transferred and set over and hereby assigns, transfers and sets over to the Assignees the said contract of November 17th, 1921 and has assigned to the Assignees the said contract with the Western Oil Fields Corporation by assignment bearing even date herewith, each of the said Assignees taking a one-half interest in the said contracts, but subject nevertheless as to the contract of November 17th, 1921 to the conditions and agreements hereinafter set forth, namely:—

1. The Assignees take over the said contract of November 17th, 1921 as of the 1st day of June, 1923 and agree to fulfil the same upon their part, and the said re-purchase agreement is hereby cancelled and ended as of the 1st day of June, 1923, the Assignor paying according to the terms thereof for all crude petroleum delivered up to the 31st day of May inclusive.

2. The Assignor having duly paid to the Humphreys Mexia Company and the Humphreys Texas Company in accordance with the terms of the said contract of November 17th, 1921 the stipulated price for all crude petroleum actually delivered according to the terms thereof up to the 31st day of May 1923 inclusive, the Assignees hereby assume all and any burdens or liabilities in respect of any and
459 all claims that have been or may hereafter be made by the Humphreys Mexia Company and/or the Humphreys Texas Company, their successors and assigns respectively, hereby agreeing to protect the Assignor against such claim and any costs, charges or expense in connection therewith,—the intent of this agreement being that the Assignees in taking an assignment of said contract of November 17th, 1921 and cancelling the repurchase agreement, assume the position of the Assignor so that the Assignor having duly made payment for all petroleum delivered up to the 31st May 1923 inclusive shall not thereafter have any liability direct or indirect in connection with the said agreements hereinbefore referred to or any transaction in connection therewith.

In Witness Whereof the parties hereto have hereunto set their corporate seals under the hand of their proper officers respectively.

CONTINENTAL TRADING COM
PPANY LIMITED (Seal)
Lewis Samuel, President
Harold E. Boston, Secretary

THE PRAIRIE OIL AND GAS
COMPANY
N. K. Moody, Vice President

(Prairie Seal)

Attest:
J. A. Hollihan
Secretary.

SINCLAIR CRUDE OIL PUR
CHASING COMPANY
By H. L. Phillips, President
K. Porter, Asst. Secretary

(SCOPC Seal)

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460 The initials under the note "approved as to form", are the initials of Mr. R. W. Rarland, of counsel for the Sinclair Consolidated Oil Corporation. The Sinclair Crude and the Sinclair Consolidated have offices in the same place in New York. The office counsel of the Sinclair Crude are in Tulsa and were not available.

Mr. Osler produced this form of contract. I think this is substantially what it was. As I remember, there was a change or two made in it. I cannot point out the changes. I do not remember them.

I had met Mr. Osler previously on the train going to Mexia in 1921. I think that was after the November 17, 1921 contract was signed. It was when Mr. Stewart, Mr. Sinclair and others went down to look at the field and I happened to be in that party. I did not then know him as President of the Continental Trading Company. I had known him as President of the Continental Trading Company on the date that I met him in New York. I don't remember that I was introduced to him by anyone. I met him in the office of the Sinclair Consolidated Oil Corporation at 45 Nassau Street.

When I went there I had heard that the consideration of the agreement was to be $400,000. I don't remember who told me that; the proposition had been talked at the meetings we had in New York and Chicago, but who made the statement I do not know. I did not in fact negotiate with Mr. Osler for a smaller consideration and the paper as made out had the consideration written in it and I don't remember that the consideration was a subject of discussion between us.

I do not have the figures as to how much oil had been taken out at that time under the Humphreys Mexia and Humphreys Texas contract. I may have known the figures at the time we entered into the assignment. I think I made up some figures on how much the contract had been worth up to that date. My recollection is that something like 2,000,000 barrels of oil had been delivered under it at that time and that there would therefore be left something like 2,000,000 barrels of oil to be run to the Continental at the time of the purchase by my company and the Prairie.

No meeting of the Board of Directors of the Sinclair Crude Oil Purchasing Company had been held 461
to authorize the transaction prior to the time I met Mr. Osler. I had no conversation with Mr. Sinclair about it, nor with any officer, director or representative of the Prairie Oil and Gas Company. The contract was subject to their approval. My understanding was it had not been taken up with them.

Mr. Sinclair and Mr. Stewart, who signed the guarantee agreement for the directors (Pl. Ex. 128) were not at that time directors of the Sinclair Crude Oil Purchasing Company. I assume I was there [illegible] of organization of the Crude Oil Purchasing meeting was held in Chicago. I have no recollection of it definitely. When the contract between Humphreys Mexia Company and the Humphreys Texas Company and the Prairie and Sinclair Crude Oil Purchasing Company was presented to me it had been tentatively signed by Mr. Sinclair and Mr. Stewart for the Directors. That is Pl. Ex. 128. I do not remember that the contracts (Pl. Exs. 127 and 129) were before the Board of the Sinclair Crude Oil Purchasing Company when Plaintiff's Exhibit 128 was approved. I have no recollection of seeing the contracts at that time. I either knew at the time of this meeting in Chicago, or subsequently learned that the Continental Trading Company had purchased from Humphreys at $1.30 and that we purchased

from the Continental at $1.75 or better. I cannot be certain whether I knew it at that time.

Cross-Examination.

I don't believe I saw the guarantee (Pl. Ex. 124) signed by Mr. Taber and Mr. Carlson. I knew of that guarantee at the time the assignment was taken from the Continental Trading Company in May, 1923. At the time I went to New York and met Mr. Osler I knew of the guarantee and the contract that was made between Continental and the Humphreys companies (Pl. Ex. 122). The contract of purchase from the Continental (Pl. Ex. 125) and the contract of guarantee (Pl. Ex. 124) had all been approved and this new contract that we were to make had been discussed informally with the Directors individually. I first saw it in an
462 informal meeting. Mr. Sinclair was not in New York when I went there to meet Mr. Osler. My understanding is he was in Europe.

Redirect Examination.

I do not know which of our Directors were present at the particular informal meetings where this contract (Pl. Ex. 126) was mentioned and discussed. Some of our Directors were present in Chicago and some in New York at such discussions. I think Mr. Carlson was probably there. He was the Secretary. I have no positive recollection that Mr. H. F. Sinclair was present nor any positive recollection that he was not. I have no distinct remembrance of these meetings or discussions. I know it was simply mentioned that there was a possibility of buying this contract for $400,000. I was never told with whom Mr. Osler had communicated that possibility. I cannot remember who were first present when the matter was discussed, but as a result of the discussion I went to New York. I arranged the meeting there with Mr. Osler by telegram to Mr. Osler. This was not more than a day or two before we met as I remember.

Recross Examination.

Referring to the meeting of the Board of Directors where the contract by Sinclair Crude and Prairie with Continental (Pl. Ex. 125) was ratified in November, 1921, I am not sure whether I was advised at that meeting that Continental had bought this oil at $1.50 a barrel when I voted to approve the guarantee of Continental's contract. I may have been advised of the fact after that just a few days; I am not sure.

463 Deposition of W. P. J. O'MEARA, a witness on behalf of plaintiff.

Direct Examination.

I reside at Ottawa, Ontario, and am Junior Departmental Solicitor, Department of the Secretary of State. I produce certain records of said department having to do with Continental Trading Company, Ltd. These records are a petition for incorporation of Continental Trading Company, Ltd., under the provisions of the Companies Act and amending acts; a letter dated Toronto, November 16, 1921, from Messrs. Osler, Hoskin & Harcourt, Barristers and Solicitors; draft of the Letters Patent incorporating the company; copy of letter of the Department of November 17, 1921, transmitting Letters Patent signed by me; letter from Osler, Hoskin & Harcourt calling attention to erroneous insertion of the word "stock" in Letters Patent; letter of November 23, 1921, returning the Charter amended by striking out the word "stock"; letter from me to Editor of the Canada Gazette, dated November 23, 1921; letter from Messrs. Osler, Hoskin & Harcourt of November 24, 1921; letter of November 18, 1921, from Messrs. Osler, Hoskin & Harcourt acknowledging receipt of Charter; letter and enclosure from Messrs. Osler, Hoskin & Harcourt dated Novefber 21, 1921; letter from Messrs. Osler, Hoskin & Harcourt dated December 6, 1921, submitting a prospectus which was enclosed with their letter; letter of August 9, 1923, from Messrs. Osler, Hoskin & Harcourt with enclosure. The enclosure with that letter is the original Letters Patent. While the letter does not mention the enclosure, the Letters Patent were returned to the Department with that letter. After the Letter Patent were returned a certificate to the Undersecretary of State was endorsed on the back of the Letters Patent; in fact two endorsements were placed upon it. Letter of August 10, 1923, Messrs. Osler, Hoskin & Harcourt. The reason for the endorsement of the Letters Patent is as follows: Prior to the present year there was no authority in the Dominion Companies Act for the cancellation of Letters Patent incorporating companies. It frequently happened that under the common law or under provisions of various Statutes a Company might desire to terminate its existence. In order that a defunct company might not be requested at intervals to file annual returns and other documents with this Department, a practice was inaugurated under which the Charter of a company whose existence had been otherwise terminated might be re-

464 turned for filing. The acceptance of the Department for filing was not held out as having any legal effect;

in fact, in each case when it was submitted by solicitors who had not been previously informed of our practice care was taken to inform them it was not held out as having any legal effect, its acceptance was merely an arrangement for convenience between the Department of the Secretary of State and the company in order that they might be saved the embarrassment of continual correspondence. When I say that a note was made in the departmental records I mean a note was made so that the company would not be requested for reports thereafter.

I also produce letter from Messrs. Osler, Hoskins & Harcourt, dated May 31, 1922, submitting for filing the annual summary of the Continental Trading Company, required by Section 106 of the Companies Act, together with the summary submitted, also letter of May 30, 1923, from Messrs. Osler, Hoskin & Harcourt, submitting a similar summary for 1923.

There is no list of stockholders or stock warrant holders of Continental Trading Company on the records of my department. None is prescribed by the Dominion Companies Act to be filed.

Application for incorporation of Continental Trading Company, Ltd., (Pl. Ex. 127) offered.

465 Application for Incorporation under the First Part of "The Companies Act"

(Chapter 79 of the Revised Statutes of Canada, 1906, and amending Acts.

To the Honorable the Secretary of State of Canada:

The application of

George Meredith Bucke, of the City of Toronto, Barrister at law.

Norman Emanual Strickland, of the City of Toronto, Barrister at law.

Thomas Delany, of the City of Toronto, Student at law.

John Joseph Buggard, of the City of Toronto, Student at law.

Morley Herman Breuls, of the City of Toronto, Student at law.

respectfully showeth as follows:

The undersigned applicants are desirous of obtaining letters patent under the provisions of the First Part of the Companies Act, (Chapter 79 of the Revised Statutes of Canada, 1906) and amending Acts, constituting them and such others as may become shareholders in the Company thereby created a body corporate and politic under the name of Continental Trading Company, Limited, or such other name as shall appear to you to be proper in the premises.

The undersigned have satisfied themselves and are assured that the proposed corporate name of the Company under which incorporation is sought is not the corporate name of any other known Company incorporated or unincorporated, or any name liable to be confounded therewith or otherwise on public grounds objectionable.

Your applicants are of the full age of 21 years.

The purposes for which incorporation is sought by the applicants are:

1. To trade in, deal in and contract with reference to lands and products thereof, or interests in land, mines, quarries, wells, leases, privileges, licenses, concessions and rights of all kinds; and to manufacture, produce, buy, sell and deal in goods, wares and merchandise of every kind and description and without limiting the foregoing, including coal, salt, chemicals, oil, ores, metals, minerals, mineral substances of all kinds and any and all products of any of the same;

2. To acquire, purchase, take on lease, or license, hire, hold, use, sell, grant leases of, grant licenses of, exchange, alienate, dispose of and otherwise deal in or contract with reference to lands, or interests in land, personal property of all kinds or interests therein, rights, privileges, licenses and concessions;

3. To acquire, lease, construct, improve, own, use, operate, deal in or contract with reference to ships, boats or vessels, of any description, wharves or wharfage facilities, docks and docking facilities, cartage plant, forwarding plant, warehouses, and towing, wrecking and salvage plant or any interest in any of the same;

4. To work, manage, operate, turn to account, explore, develop and improve the properties of the company, whether mining, agricultural or otherwise;

5. To deal in and contract with reference to timber
466 lands, timber licenses, and timber rights and to cut, render merchantable, handle, manufacture, deal in and contract with reference to timber and lumber of all kinds and all products thereof;

6. To acquire, lease, construct, improve, own, use and operate works for the development of power, light and heat, to use, purchase, sell, supply, lease or otherwise deal in or contract with reference to power, light and heat, subject always to all local laws or regulations in that behalf;

7. To acquire, lease, construct, improve, own, use and operate irrigation works and works for the supply of water for other purposes, and to use, purchase, sell, supply, lease or otherwise deal in or contract with reference to water for irrigation or other purposes, subject always to all local laws or regulations in that behalf;

8. To manufacture, buy, sell and deal in property and goods of all kinds, and without limiting the above, in any appliances, implements, tools, machinery, apparatus, goods, supplies and accessories in any way connected with and incidental to the operations of the company or to the use or any of the products of the company;

9. To acquire, lease, construct, improve, own, use, operate and maintain pipe lines for the transportation of petroleum, natural gas, oil and all other commodities capable of being transported by pipe lines;

10. For the purposes of the company to acquire, lease, construct, improve, maintain, own, use, operate, sell, let and deal in dwelling houses, lodging houses and hotels;

11. To operate ranches or farms for live stock, dairying or agriculture, to breed, raise, keep or render marketable and deal in horses, cattle and live stock of all kinds and to produce, buy, sell, manufacture and deal in all products and by-products thereof and all agricultural products;

12. To operate construction or building plants and to take and carry out contracts for building or for construction work of any kind;

13. To undertake, carry on and execute transactions as financial or commercial brokers or agents;

14. Notwithstanding the provisions of Section 44 of The Companies' Act, to subscribe for, purchase, assume liability

under, acquire, hold, sell, exchange, dispose of or otherwise deal in or contract with reference to bonds, debentures, stock or other securities or obligations or any estate or interest therein; and to supply or to accept, in whole or in part, as consideration for, satisfaction of or security for any contract, indebtedness or obligation, to or of the company, property, obligations, shares and securities of any kind, at such valuation and upon such terms as may be agreed upon;

15. To acquire, dispose of or otherwise deal in properties, business or undertakings of all kinds;

16. To furnish aid to any business or undertaking similar in whole or in part to that of the company with which the company may have business relations, by way of loan, bonus, endorsement, agreement, guarantee, management or other service, and to manage, supervise and control the same in whole or in part and to act as agent or attorney for the same;

17. To carry on any other business which may seem capable of being conveniently or advantageously carried on in connection with the business of the company or calculated directly or indirectly to enhance the value of, to facilitate the realization of or to render more profitable any of the company's business, properties or rights;

18. To invest the moneys of the company not immediately required in such investments as may from time to time be determined;

19. To cooperate in, aid in, subscribe towards or subsidize any proceeding or undertaking which may seem calculated, directly or indirectly to benefit the company;

20. To acquire or undertake the whole or any part of the business, property and liabilities of any person, partnership, association, company or corporation having objects altogether or in part similar to the company or carrying on any business which the company is authorized to carry on, or possessed of property which may seem suitable or desirable for the purposes of the company;

467 21. To apply for, procure, obtain, purchase, or otherwise acquire and to hold, protect, prolong, renew and deal in, sell, lease, or otherwise alienate or dispose of every and all letters patents, patents, patent rights, privileges, grants, trade marks, inventions, improvements and improved or secret processes, formulae, licenses, protections, concessions and the like, both foreign and domestic, conferring or

relating to any exclusive or non-exclusive or limited right to use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the company, or the acquisitions of which may seem calculated directly or indirectly to benefit the company, and to use, exercise, improve, develop or grant licenses, sub-licenses, rights or privileges in respect of or otherwise turn to account the property, right or information so acquired;

22. To enter into partnership or into any arrangement for sharing of profits or expense, union of interests, cooperation, joint adventure, reciprocal concessions or otherwise, with any person, partnership, association, company or corporation carrying on or engaged in, or about to carry on or engage in, any business or transaction which the company is authorized to carry on or engage in, or any business or transaction which may seem capable of being conducted so as directly or indirectly to benefit the company; and to lend money to, guarantee the contracts of, or otherwise assist any such person, partnership, association, company or corporation, and to take or otherwise acquire shares and securities of any such partnership, association, company or corporation and to sell, hold, re-issue, with or without guarantee or otherwise deal with the same;

23. To take or otherwise acquire and hold shares in any partnership or stock or shares in any association, company or corporation carrying on any business which may seem capable of being conducted so as directly or indirectly to benefit the company;

24. To apply for, promote and obtain from the Dominion of Canada or any other authority, whether Dominion, Provincial, Imperial, Colonial or foreign, and including subordinate and municipal authorities any statute, ordinance, order, regulation or other authorization or enactment which may seem desirable to the company or calculated directly or indirectly to benefit the company;

25. To enter into any arrangements with any governments or authorities, supreme, provincial, civic, municipal, local or otherwise, that may seem conducive to the company's objects or any of them, and to obtain from any such government or authority any statutes, ordinances, licenses, contracts, orders, regulations, decrees, rights, powers, franchises, privileges and concessions which the company may think it desirable to obtain, and to carry out, exercise and comply with the terms of the same.

26. To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company, or of its predecessors in business, or of any person, partnership, association, company or corporation allied with the company in business or subsidiary to the company or in which the company holds shares or securities, or to benefit the dependents or connections of such persons, and to grant pensions and allowances, and to make payments towards insurance and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object;

27. To promote, form, organize, manage, develop, take interests or stock or shares in and assist financially or otherwise any partnership, association, company or corporation for the purpose of acquiring or taking over all or any of the property and liabilities of the company or for any other purpose which may seem calculated directly or indirectly to benefit the company;

28. To acquire, purchase, take on lease, hire, construct, improve, own, use, maintain, operate, manage, carry out and control plant, equipment, machinery, supplies, buildings works, shops, warehouses, manufactories, pumps, mines, tank cars, pipe lines, smelters, refineries, roads, ways, canals, bridges, electric works, electric plants, hydraulic
468 works, hydraulic plants, boats, ships, docks, wharves, piers, gas works, cables, waterworks, reservoirs, aqueducts, flumes, ditches and all such other structures works, conveniences and appliances as may seem calculated directly or indirectly to advance the company's interests, and to contribute to, subsidize or otherwise assist or take part in the acquisition, purchase, leasing, hiring, construction, improvement, ownership, use, maintenance, operation, management, carrying out or control thereof;

29. Where such course is required for the purpose of the Company or may seem calculated directly or indirectly to advance the Company's interests, to acquire, purchase, take on lease, hire, construct, improve, own, use, maintain, operate, manage, carry out and control, but only upon lands owned or controlled by the company, or over which the company may have a right or license to that effect, such roads, ways, bridges, lines of rail, spurs, sidings, tracks, rolling stock, cables, wires, motors, locomotives, electrical plant and all such other structures, works, conveniences and appliances

as may be required for the purpose of maintaining communication by telegraph or telephone or of effecting the transport of goods, or passengers, and to contribute to, subsidize or otherwise assist or take part in the acquisition, purchase, leasing, hiring, construction, improvement, ownership, use, maintenance, operation, management, carrying out or control thereof;

30. To draw, make, accept, endorse, execute and issue promissory notes, bills of exchange, bills of lading, warrants and other negotiable or transferable instruments;

31. To sell, exchange, lease, dispose of, turn to account or otherwise deal with or contract with reference to all or any part of the property or undertaking of the company or any part thereof, for such consideration as the company may think fit, and in particular, and notwithstanding the provisions of Section 44 of the Companies' Act, for shares, debentures or securities of any other partnership, association, company or corporation;

32. To adopt such means of making known the products of the company as may seem expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards and donations;

33. To sell, exchange, lease, dispose of, turn to account or otherwise deal with or contract with reference to all or any part of the property and rights of the company;

34. To consolidate or amalgamate with any other company having objects similar in whole or in part to those of the Company.

35. To carry on all or any of its operations and business and without restriction or limit as to amount in any Province of the Dominion of Canada and in any other British or foreign country, subject to the laws of such Province, British or foreign country;

36. To procure the company to be registered, licensed or otherwise recognized in any foreign country, and to designate and appoint persons herein as attorneys or representatives of the company with full power to represent the company in all matters according to the law of such foreign country and to accept service for and on behalf of the company of any process or suit;

37. To pay out of the funds of the company all or any of the expenses of or incidental to the formation and organization thereof;

38. To pay for any property or rights acquired by, and, with the approval of the shareholders, for any services rendered to the company in such manner as may seem expedient, and in particular by the issue of shares or securities of the company;

39. To employ, contract with and provide for the remuneration of brokers, commission agents and underwriters upon any issue of shares, bonds, debentures, debenture stock or other securities of the company;

40. To distribute or divide assets of the company in specie amongst the shareholders;

41. To do all or any of the above things as principals, agents, contractors or otherwise, and either alone or in conjunction with others;

42. To declare for the amount of any dividend which may lawfully be declared payable in money, stock dividends and issue therefore shares of the company as fully paid or partly paid, or credit the amount of such dividend on shares of the Company already issued but not fully paid and the liability of the holders of such shares shall be reduced by the amount of such dividend.

43. To do all such things as may seem directly or indirectly to be incidental to or conducive to or convenient or proper for the accomplishment of the purposes or the attainment of the objects of the company, or any of them, or expedient for the production or benefit of the company;

To issue share warrants under the provisions of The Companies Act subject to the following provisions:

First. The share warrants shall be issued upon such request, the compliance with such conditions, execution of such documents, the surrender of such certificates, the filing of such evidence and the payment of such fee as the directors may time to time determine.

Second. The share warrants shall be under the seal of the Company and shall be in such language and form as the directors may from time to time determine. They shall be issued in such denominations as the directors may from time to time determine.

Third. There may be attached to the share warrants coupons, payable to bearer, for dividends upon the shares in question. The form and number of said coupons and the arrangements for the issue of fresh coupons upon the exhaustion thereof shall be as the directors may from time to time determine.

Fourth. The coupon shall not contain any statement of the amount payable in respect thereof nor of the date of such payment, but shall be identified by number, and upon any dividend being declared the directors shall make provision in such manner as they shall from time to time think fit, for the payment of such dividend to the bearer of the proper coupon.

Fifth. The directors may from time to time make such provisions as they may think fit for due proof by the bearer of a share warrant of his position as such prior to his exercise of the rights of a shareholder by signing a requisition or waiver or casting a vote or otherwise, including provisions for the deposit of the share warrant for a stated time. No more than one person shall be recognized as a shareholder in respect of any share warrant.

Sixth. If a share warrant or coupon be worn out, defaced, lost or destroyed, the directors may issue another share warrant or coupon in its stead upon such terms as to evidence indemnity or otherwise and upon payment of such fees as they may determine.

Seventh. The bearer of a share warrant shall be deemed to be a shareholder of the Company for all purposes and to the full extent, subject always to the provisions of The Companies' Act and Amendments and to the By-laws of the Company.

Eighth. The Company may from time to time by By-laws enact, repeal, amend or re-enact regulations with regard to share warrants not inconsistent with the Companies' Act or Amendments or with these Letters Patent.

Ninth. The holder of a share warrant shall be subject to the conditions for the time being in force whether made before or after the issue of such warrant.

The operations of the Company to be carried on throughout the Dominion of Canda and elsewhere.

The chief place of business of the proposed Company within Canada will be at the Village of Port Perry in the County of Ontario in the Province of Ontario.

The amount of the capital with which the Company will carry on business is to be not less than Five Hundred Thousand Dollars ($500,000).

The capital stock of the Company is to be divided into One Hundred Thousand (100,000) shares without nominal or par value to be allotted and issued from time to time for consideration as may be fixed by the Board of Directors from time to time.

The following are the names in full and the address and calling of each of the applicants with the number of shares taken by each applicant respectively:

470 Applicant	Number of shares subscribed.
George Meredith Huycke, Barrister-at-law, Toronto	1.
Norman Emanuel Strickland, Barrister-at-law, Toronto	1.
Thomas Delany, Student-at-law, Toronto	1.
John Joseph Huggard, Student-at-law, Toronto	1.
Morley Herman Bruels, Student-at-law, Toronto	1.

The said George Meredith Huycke, Norman Emanuel Strickland, Thomas Delany, John Joseph Huggard and Morley Herman Bruel, will be the first or provisional directors of the Company.

A stock book has been opened and a memorandum of agreement by the applicants under seal in accordance with the statute has been executed in duplicate—one of the duplicates being transmitted herewith.

The undersigned therefore request that a charter may be granted constituting them and such other persons as hereafter become shareholders in the Company, a body corporate and politic for the purposes above set forth.

Signatures of witnesses	Signatures of applicants
(Sgd.) Harold E. Boston	(Sgd.) G. M. Huycke
(Sgd.) Harold E. Boston	(Sgd.) N. E. Strickland
(Sgd.) Harold E. Boston	(Sgd.) Thomas Delany
(Sgd.) Harold E. Boston	(Sgd.) John J. Huggard
(Sgd.) Harold E. Boston	(Sgd.) Morley H. Breuls

Dated at Toronto this 16th day of November, 1921.

(To be executed in duplicate; one duplicate to be transmitted with the application.)

The Continental Trading Company, Limited.

Memorandum of Agreement and Stock Book.

We, the undersigned, do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of the First Part of "The Companies Act," (Chapter 79 of the Revised Statutes of Canada, 1906) and amending acts, under the name of

Continental Trading Company Limited, or such other name as the Secretary of State may give to the Company, to carry on business using a capital of not less than $500,000 and having a capital stock divided into 100,000 shares without nominal or par value to be allotted and issued from time to time for such consideration as may be fixed by the Board of Directors from time to time.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said Company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such company to the said amounts.

In witness whereof we have signed.

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Name of Subscriber	Seal	Amt. of Sub.	Date and place of sub.		Res. of Subscriber
(Sgd.) G. M. Huycke	(Seal)	1 share	Nov. 16	Toronto	Toronto
" N. E. Strickland	"	"	"	"	"
" Thomas Delany	"	"	"	"	"
" John J. Haggard	"	"	"	"	"
" Morley H. Breuls	"	"	"	"	"

(All signatures witnessed by Harold E. Boston.)

Canada:
Province of Ontario,
County of York—To-wit:

In The Matter Of the application of George Meredith Huycke and others for incorporation under the First Part of "The Companies Act" (Chap. 79 of the Revised Statutes of Can. 1906) and amending Acts, under the name of Continental Trading Company Limited.

I, Harold Emerson Boston, of the City of Toronto, in the County of York, Student-at-law, make oath and say that:

1. I was personally present and did see the within Petition and Memorandum of Agreement and Stock Book duly signed and executed by George Meredith Huycke, Norman Emanuel Strickland, Thomas Delany, John Joseph Huggard and Morley Herman Breuls, the parties hereto.

2. The said Petition and Memorandum of Agreement and Stock Book were executed at the City of Toronto aforesaid.

3. I know the said parties.

4. I am a subscribing witness to the said Petition and Memorandum of Agreement and Stock Book.

Sworn before me at the City of Toronto in the County of York the 16th day of November A. D. 1921.

(Sgd.) HAROLD E. BOSTON.
(Sgd.) MORLEY SMITH,
A Commissioner, etc.

Canada:
Province of Ontario,
County of York—To-wit:

In The Matter Of the application of George Meredith Huycke and others for incorporation of under the First Part of "The Companies Act." Chapter 79, of the Revised Statutes of Canda, 1906) and amending Acts under the name of Continental Trading Company Limited.

I, Morely Herman Bruels of the City of Toronto in the County of York, Province of Ontario, Student-at-law do solemnly declare:

1. That I am one of the applicants herein.

2. That I have knowledge of the matter, and that the allegations in the within petition contained are, to the best of my knowledge and belief, true in substance and fact.

3. That I am informed and believe that each petitioner signing the said petition is of the full age of twenty-one years, and that his name and description have been accurately set out in the preamble thereto.

4. That the proposed corporate name of the Company is not any public ground objectionable and that it is not that of any known Company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

5. That I have satisfied myself and am assured that no public or private interest will be prejudicially affected by the incorporation of the Company aforesaid.

472 And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

(Sgd.) MORLEY H. BREULS.

Declared before me at the City of Toronto in the County of York this 16th day of November, A. D. 1921.

(Sgd.) MORLEY SMITH.
A Commissioner, etc.

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473 November 16th 1921.

Thomas Mulvey, Esq., K. C.,
Under Secretary of State,
Ottawa.

Dear Sir:—

Continental Trading Company Limited Re Incorporation
Our File #3066.

We enclose herewith application for the incorporation of the above company together with our cheque for $2300, in payment of the fees herein receipt of which kindly acknowledge.

We shall be much obliged if you can have the letters Patent incorporating the above company issue as of the 17th inst., and let us have the same at your early convenience.

Yours truly,

(Sgd.) OSLER HOSKIN & HARCOURT

474 Ottawa, November 17, 1921.

Gentlemen:

I have the honour to enclose Letters Patent incorporating "Continental Trading Company, Limited".

The usual notice of incorporation will appear in next week's issue of the Canada Gazette, a copy of which will be forwarded you in due course.

I have the honour to be,

Gentlemen,

Your obedient servant,

(Stamp) W. O. J. O'MEARA
for Under-Secretary of State.

Messrs. Osler, Hoskin & Harcourt,
Barrister, etc.,
The Dominion Bank Building,
68 Yonge Street,
Toronto, Ont.

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475 Osler, Hoskin & Harcourt,
Barristers, Solicitors, &c.

November 18th, 1921.

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Thomas Mulvey, Esq., K. C.,
Under Secretary of State,
Ottawa.

Dear Sir:—

Continental Trading Company Limited.

Re Incorporation. Our File

#3066.

We have Mr. O'Meara's letter of the 17th inst. together with letters Patent dated the 17th day of November, 1921, incorporating the above Company. We are very much obliged indeed to you for having this matter dealt with so expeditously.

Yours truly,

(Sgd) OSLER HOSKIN AND HARCOURT

476 Osler, Hoskin & Harcourt
Barristers, Solicitors, &c.

The Dominion Bank Building,
68 Yonge Street,
Toronto.

December 6th, 1921.

Thomas Mulvey, Esq. K. C.
Under Secretary of State,
Ottawa

Dear Sir:—

Continental Trading Company, Limited Re
Prospectus. Our File #3063.

We enclose herewith Prospectus of the above Company, dated for filing for Registration with the Secretary of State of Canada the 8th day of December, 1921, together with $1.50 in payment of the fees for filing receipt of which kindly acknowledge.

We will be much obliged if you will advise us when the above has been duly fiolix filed.

Yours truly,

(Sgd) OSLER HOSKIN AND HARCOURT

Prospectus.

Dated and filed for registration with the Secretary of State of Canada the 8th day of December, 1921.

Continental Trading Company, Limited.

Incorporated under the "Companies Act" of the Dominion of Canada by Letters Patent, dated the 17th day of November, 1921.

General Office Toronto, Ontario.

Capitalization.

100,000 shares, without nominal or par value.

Board Of Directors.

H. S. Osler, K. C.	Toronto, Ontario.
Britton Osler, K. C.	Toronto, Ontario.
N. E. Strickland, Barrister at Law.	Toronto, Canada.

For the purpose of complying with the provisions of "The Companies Act" the following information is given:—

The contents of the Letters Patent incorporating the Company appear as Schedule "A" hereto and form part of the Prospectus.

Original Incorporators.

The original incorporators were the persons set out below and the number of shares subscribed for by each are the shares set out opposite their respective names.

	George Meredith Huycke,	Toronto, Ont.	1 share
	Norman Emanuel Strickland,	"	1 share
	Thomas Delany,	"	1 share
477	John Joseph Huggard,	Toronto, Ont.	1 share
	Morley Herman Breuls,	"	1 share

and the said George Meredith Huycke, Norman Emanuel Strickland, Thomas Delany, John Joseph Huggard and Morley Herman Bruels were also the provisional directors of the Company.

Qualification And Remuneration Of Directors.

There is no qualification fixed by the by-laws of the Company as to the number of shares necessary to qualify a Director.

The by-laws of the Company provide that the remuneration of the directors may be fixed by the Board.

Minimum Subscription.

The minimum subscription on which the directors may proceed to allotment is one share at Five Dollars ($5.00) per share.

Goodwill.

No amount has been paid or is intended to be paid for Goodwill.

Commission.

No commission shall be paid out of the funds of the Company on the sale of capital stock of the Company.

Preliminary Expenses.

No estimate has as yet been made of the preliminary expenses.

Promoters.

No amount has been paid or is intended to be paid to any of the promoters of the Company.

Auditors.

The Auditors of the Company have not yet been appointed.

Material Contracts.

Under an Agreement, dated the 17th day of November, 1921, this Company acquired from G. Evans Atwood, of the City of Toronto, for the sum of $500,000 certain contractorial rights and the said G. Evans Atwood agreed to accept 99,994 shares of the capital stock of the Company, without nominal or par value in payment and satisfaction of the said sum of $500,000.

The said contract may be inspected at the General Office of the Company, at Toronto, Ontario, at any time during usual business hours.

Interests Of Directors.

None of the Directors of the Company are interested in the promotion of the Company or in the property acquired by the Company under the contract hereinbefore mentioned.

(sgd) H. S. OSLER, Director.
" BRITTON OSLER, Director.
" N. E. STRICKLAND, Director.

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478 Osler, Hoskin & Harcourt
Barristers, Solicitors, &c

The Dominion Bank Building
68 Yonge Street,
Toronto,
9th August, 1923.

Thomas Mulvey, Esq., K. C.
Under Secretary of State,
Ottawa, Ontario.

Dear Sir:

Continental Trading Company Limited

Re Surrender Of Charter, Our File #3844.

All debts and liabilities of the above Company have been distributed and it has parted with its property and divided

its assets rateably amongst its Shareholders, the Shareholders authorizing the surrender of its Charter for cancellation and we enclose herewith Letters Patent, dated the 17th day of November, 1921, incorporating the Company for the purpose of surrender for cancellation. We will be much obliged if it may be recorded in the Department that the said Letters Patent is surrendered for cancellation and if the Department will cancel the same accordingly.

Yours truly,

OSLER HOSKIN AND HARCOURT.

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479 BIH Cable Address "Carthos"

Osler, Hoskin & Harcourt,
Barristers, Solicitors, &c.

The Dominion Bank Bldg.,
68 Yonge Street,
Toronto

May 31st, 1922

Thomas Mulvey, Esq., K.C.
Under Secretary of State,
Ottawa, Canada.

Dear Sir:—

Continental Trading Company—Dominion Annual Summary—File 3066

We enclose herewith, in duplicate, the Summary of the above company for the period ended March 31st, 1922 together with the said Company's cheque for $10.00 in payment of the fee for filing, receipt of which kindly acknowledge.

Yours truly,

(Signed) OSLER, HOSKIN & HARCOURT

(Enclosure)

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Dominion of Canada

Annual Summary

(April 1, 1921—March 31, 1922)

Return under Section 106 as amended by the Companies Act Amendment Act, 1917

(a)	The corporate name of the company	Continental Trading Company Limited
(b)	The manner in which the company is incorporated, whether by special Act or by Letters patent and the date thereof	Special Act Letters Patent of Dominion of Canada Dated the 17th day of November, 1921
(c)	The place of the head office of the company, giving the street and number thereof when possible	Street and number City or Town—Port Perry Province—Ontario
(d)	The date upon which the last annual meeting of shareholders of the company was held	The organization meetings were held on the 17th day of November, 1921
(e)	The amount of the share capital of the company and the number of shares into which it is divided	Authorized capital 100,000 shares without nominal or par value Divided into shares of $ each
(f)	The number of shares taken from the commencement of the company up to the date of the return	100,000 shares

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(g)	The amount called up on each share	shares of $ each All shares issued shares of $ each fully paid shares of $ each
(h)	The total amount of calls received	$ All shares issued fully paid

(i)	The total amount paid on shares otherwise than in cash, showing severally the amounts paid by services, commissions or assets acquired since the last annual return	99,994 shares otherwise than in cash
		$ none by services
		$ none by commissions
		99,994 shares by assets

(j)	The total amount of calls unpaid	All shares issued fully paid		
(k)	The total amount of the sums (if any) paid by way of commission in respect of any shares, bonds or debentures, or allowed by way of discount in respect of any bonds or debentures	Commission on share $		
		Commission on bonds $		
		Commission on debentures $		
		Discount on bonds $		None
		Discount on debentures $		
(l)	The total number of shares forfeited, and the amount paid thereon at the time of forfeiture	Number of shares		
		Paid thereon $		none
(m)	The total amount of shares issued as preference shares and the rate of dividend thereon, and whether cumulative	shares of $		each
		Rate of dividend		none
		Cumulative shares		
		Non-cumulative shares		
(n)	The total amount paid on such shares	$ Nothing		
(o)	The total amount of debentures, debenture stock or bonds authorized and the rate of interest thereon	Debentures-Number (none)	$	each
		Rate of interest	%	
		Debenture stock $		
		Rate of interest	%	none
		Bonds-Number	$	each
		Rate of interest	%	none
(p)	The total amount of debentures, debenture stock or bonds issued	Debenture $		
		Debenture stock $	none	
		Bonds $		
483				
(q)	The total amount paid on debentures, debenture stock or bonds, showing severally the amounts of discount thereon and the amounts issued for services and assets acquired since the last annual return	Debentures $		
		Debenture stock $		
		Bond $		
		Discount on Debentures $		None
		Discount on debenture stock $		
		Discount on bonds $		
		Issued for services		
		debentures $		
		debenture stock $		
		bonds $		
		Issued for assets		
		debentures $		
		debenture stock $		
		bonds $		

(7)	The total amount of share warrants issued	Share warrants for 99,994 shares
(8)	The names and addresses of the persons who at the date of the return are the directors of the company, or occupy the position of directors, by whatever name called	Name—H. S. Osler Address—68 Yonge St Toronto, Ont Name—Britton Osler, Address—68 Yonge St Toronto, Ont Name, N. E. Strickland Address, 68 Yonge St Toronto, Ont

Province of Ontario,
County of York—To wit:

In the matter of the summary provided by Section 106 of the Companies Act, being Chapter 79 of the Revised Statutes of Canada as amended by the Companies Act, 1917, to be filed by Continental Trading Company, Limited.

We, Henry Smith Osler, of the City of Toronto, in the County of York, and Province of Ontario, President of Continental Trading Company, Limited, and Sunova Margaret Fordyce of the City of Toronto, in the County of York, and Province of Ontario, do severally and on behalf of each other make oath and say as follows:

(1) The above named Henry Smith Osler is the President of Continental Trading Company Limited and Sunova Margaret Fordyce is the Secretary of the said Company.

(2) I have a personal knowledge of the matter herein referred to.

(3) The summary hereunto attached is complete as required by Section 106 of the Companies Act, being Chapter 79 of the Revised Statutes of Canada, as amended by the Companies Act Amendment Act, 1917, and the particulars therein set out are true.

(4) The summary hereunto attached is submitted in duplicate, and the duplicates are true and faithful copies one of the other as prescribed by Sub-Section 2 of Section 106 of the Companies Act, being Chapter 79 of the Revised Statutes of Canada, as amended by the Companies Act Amendment Act, 1917.

(5) .....

(If the President and Manager of the Company are the same person, the fact should be explained) (#)

This affidavit was sworn before me by the above-named
482 Henry Smith Osler and Suneva Margaret Fordyce at the City of Toronto in the County of York and Province of Ontario this 30th day of May, 1922.

(Signed) "H. S. OSLER"
(Signed) "S. M. FORDYCE"

(Signed) "G. M. HUYCKE"
A Commissioner

Department of the Secretary of State.

Ottawa, June 8/22.

A duplicate of the within summary was filed by the Company named therein with this Department on the 2nd day of June, 1922.

(Signed) "JNO. A. CLIFT"
For the Secretary of State of Canada

(#) In the absence of the President, Manager and Secy. or any of these officers, some other officer or officers of the company if duly authorized so to do may make this affidavit.

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483 Testimony of ROBERT RAE, a witness called on behalf of plaintiff.

Direct Examination.

I live in New York City and am Assistant Agent in charge of the Dominion Bank of Canada, whose head office is in Toronto, Canada. I was Assistant Agent in charge of the agency of the bank in New York City in 1922. I produce the ledger account of the Continental Trading Company, Ltd., of Toronto with the Dominion Bank of Canada, New York Agency (Pl. Ex. 135) offered. This ledger account is in the handwriting of H. G. Henderson. I do not see any of my figures. There is also a bond account of the Continental Trading Company, Ltd., which is here in Court in Mr. Henderson's possession. It is kept entirely in Mr. Henderson's handwriting and is one of the official records of the bank, kept in the usual course of business and has been produced here as such. I produce a letter of April 11, 1922, which is signed with Mr. H. S. Osler's signature.

Letter, H. S. Osler, President, to C. S. Howard (Pl. Ex. 136) offered.

Continental Trading Company Limited

The Dominion Bank Building

Room 801

Toronto
11th April 1922

C. S. Howard, Esq.,
Dominion Bank,
51 Broadway,
New York City.

Dear Mr. Howard:—

Confirming my verbal advice to you when in New York last week, I now beg to request that you forward to the National City Bank for credit Humphreys Oil Company balance which will remain after deducting amount due Humphreys Mexia note with interest from $1,984,058.30. You will doubtless note that the name of this Company has been changed, the Humphreys Mexia Company having been reorganized.

On Saturday April 15th I will forward by mail to Denver, Colorado, cheque in favour of The Western Oil Fields Corporation for $466,417.28, and on the same date I will also forward to A. E. Humphreys Trustee, addressed to Mexia, Texas, cheque in his favour for $42,301.57.

The above debits will leave a net credit to the Continental Trading Company Limited from the transactions of this week $436,680.31.

484 Please purchase for this account at your discretion U. S. Liberty 3½% Bonds to the face amount of $300,000, debiting the cost of same from time to time as paid to this account.

Please wire total amount due on note April 15th.

You will, of course, charge against this account on April 15th the note of the Continental Trading Company with interest marking same cancelled in the ordinary course. Please forward to the Head Office immediately on receipt of this letter Note of the Humphreys Mexia Company in favour of the Continental marking same cancelled, with instructions to deliver it to me on Saturday, as I wish to forward same to Humphreys Oil Company when advising them of settlement.

All letters and vouchers accompanying payments both by Sinclair and Prairie companies will doubtless be forwarded by you to this office in due course.

Yours very truly,

(Sgd) H. S. OSLER,
President.

The entries in Pl. Ex. 135, under date of April 13th, are not in the handwriting of any clerk now in the employ of the bank and I cannot tell where the parties are who made them.

485 The testimony of the above witness was received subject to the objection and exception of defendants, and with the right reserved to defendants to move to strike the same from the record.

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486 Testimony of HECTOR G. HENDERSON, a witness called on behalf of plaintiff.

Direct Examination.

I live in New York. I am a clerk in the Dominion Bank and was Securities Clerk in the New York Agency of that bank since May 1920. I handle incoming securities from the time they come in. They are delivered to me, checked by me, and I make the necessary entries to see that payment is made. I do the same with regard to outgoing securities. I keep the security account of securities coming in and going out. I produce the record, being the securities account of the Continental Trading Company, Ltd., to which Mr. Rea referred in his testimony, consisting of two sheets (Pl. Ex. 138) offered. The entries on these sheets are in my handwriting, except for the receipt signed for securities on one sheet. The entries under date of April 13, 1922, are in my handwriting. I, on behalf of the Dominion Bank, New York Agency, received $100,000 in bonds from Salomon Brothers and Hutzler, which were purchased by the Dominion Bank, New York Agency on April 13, 1922. They were received for account of the Continental Trading Company, Ltd. I also received from Walker Brothers $100,000 of bonds, from Rhoades & Company $50,000 of bonds on April 13, 1922 for the account of the Continental Trading Company, Ltd., and from Walker Brothers $50,000 of bonds for the same account on April 17, 1922. These bonds, totaling $300,000 I delivered to H. S. Osler May 8th,

and took his receipt for them. I produce his receipt. The handwriting in the body of it is of A. W. Rice, who, with me, had custody of those bonds from the time they were received by the Dominion Bank until they were delivered to Mr. Osler and the receipt is signed in Mr. Osler's handwriting. I was present when they were delivered to Mr. Osler.

Receipt, H. S. Osler (Pl. Ex. 139) offered.

Agency, The Dominion Bank,
51 Broadway

New York, May 8, 1922.

Received from The Dominion Bank by Continental Trading Co. Ltd. Three Hundred Thousand 00 U. S. Lib. Loan Dollars 3½ Bonds

In account of $300,000.00 Bonds.

(Sgd) H. S. OSLER
President, Cont. T. Co.

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487 I also have and produce the brokers' contracts for the purchase of the bonds above mentioned, purchased by the Dominion Bank, April 13th, and the bills for the securities.

I personally counted the bonds delivered by the three brokerage houses mentioned on April 13th. I earmarked these bonds and set them aside in the vault and from the vault delivered them to Mr. Osler.

488 The testimony of the above witness was received subject to the objection and exception of defendants, and with the right reserved to defendants to move to strike the same from the record.

489 Plaintiff offered in evidence Pl. Ex. 138, produced by the witness Rae and identified by the witness Henderson. Said exhibit is a ledger account consisting of loose-leaf sheets, the caption of the sheets being as follows:

Sheet No. The Dominion Bank (Dividend) or (Interest) (3½ Payable))15 June)15 Dec

Name: Continental Trading Co., Ltd.—Credit U. S. Liberty Loan; Due: 15 June 1947.

The sheet is ruled in columns, the left-hand column having the name of the broker from whom the security was pur-

chased, and other columns running across the page showing the date of receipt, number and amount of bonds, price, commission, net amount, date delivered, receipt and certain columns of debtor and creditor, and a column for a balance. The items under the date of April 13, 1922, show the receipt from Salomon Brothers & H of $100,000 of bonds at 99.90 and interest; from Walker Brothers of $100,000 of bonds at 99.88 and interest; from Rhoades and Co. of $50,000 at 99.70 and interest; and on April 17th the receipt from Walker Brothers of $50,000 at 99.86. Under the columns showing date delivered and receipt there appears an entry that said $300,000 of bonds were delivered on May 8th to H. S. Osler "See receipt". The balance of the account shows purchases from time to time from various brokers from February 15, 1922 to June 13, 1923, of sundry amounts of First Liberty Loan Bonds, totaling for the whole period $3,080,000, including the $300,000 above mentioned, and the delivery of same at various times to H. S. Osler.

Said exhibit was received over defendants' objection and exception and subject to the right reserved to defendants to move to strike the same from the record.

490 Plaintiff offered in evidence as Pl. Ex. 140, the brokers' bills from Rhoades and Company, Walker Brothers and Salomon Brothers & Hutzler to Dominion Bank, produced by the witness Hunderson. They are as follows:

Rhoades & Company
27 William Street,
New York

Delivery Bill

	Name	Quan	Description of Security	Price	Int Amount	Amount
A13	Dominion Bank	50M	LIB 1st 3¼ 3½	99 70	573 61	49850 00 50423 61 Liberty

Rhoades & Company
Members New York Stock Exchange
27 William St., New York

Dear Sir New York, April 12, 1922.

We have this day Sold to you the below mentioned securities:

Quan	Description of Security	Price	Int	Amount	T. Tax	Comm.	Net Amt
50M	Lib 1st 3¼ 3½	99 70	573 61	498 50	00		50433 61

Yours truly,

RHOADES & COMPANY

Per.....

New York, April 13, 1922.

Dominion Bank
By Walker Bros.
71 Broadway
Telephone Bowling Green 7380

100M	Liberty 3½	99 88	99 880
		Int	1147 22
		Commission	62 50
			101089 72

491

Walker Bros.
71 Broadway
New York, April 13, 1922

Dominion Bank

Attention C. S. Howard, Esq.

In compliance with your instructions we have Bought for your account and risk

Shares	Description	Price	Amount	Commission	Int.	Net Amount
100M	Liberty 3½	99 88	998 80	62 50		99942 50
	Interest	11 4722 per M				1147 22
						101089 72

Sale Date	Del'y Date	Solomon Bros. & Hutzler
4/12/22	4/13/22	Members N. Y. Stock Exchange
L2940		27 Pine Street, New York

To Dominion Bank of Canada
We confirm Sale to you this day

Quantity	Security	Price	Principal	Total Amount
100M	Liberty 1st 3 1/2'28	99 80	99880	101047 22
			Interest 1147 22	

Maturity
Int. Periods J & D15 Basis 3 Mos 28 Days

Delivery Terms
Reg

Payment in New York Funds is due us at our office on Delivery date, in accordance with ruling of the N. Y. Stock Exchange we are obliged to charge interest at current rates for every day payment is delayed beyond regular delivery date, which except in the case of a special contract, is the day following date of sale

To Dominon Bank of Canada

A. W. Rice.

SALOMON BROS. & BUTZLER.

492

From

Delivery Bill

Salomon Bros. & Hutzler
27 Pine Street
New York.

Sale Date	Del'y Date	
4/12/22	2/13/22	
Comp. No.	Item No. 2	Date
1.2949		

Sold to Dominon Bank of Canada

Quantity	Security	Price	Principal	Total Amount
100M	Liberty 1st 3½ 1/28	99.90	99900	101047.22
			Interest 1147.22	Additional Interest
	Maturity	Basis 3 Mos. 28 Days		Days At
	Int. Periods J & D 15			

Delivery Terms Reg
Received from Salomon Bros. & Hutzler
The Above Security

Dominon Bank of Canada

192

Form
2

Receipt.

Said exhibits were received in evidence over defendants objection and exception and subject to the right reserved to defendants to move to strike the same from the record

493 Testimony of GEORGE W. HEALEY, a witness called on behalf of Plaintiff.

Direct Examination.

I live in New York City and am General Manager of Salomon Brothers & Hutzler, who are dealers in United States

Government Bonds and other securities. I have been general manager since before April 13, 1922. The accounts and records of the firm were kept under my supervision regularly and in the daily course of business. The transactions of the firm were recorded at the time they took place in the books and records of the firm. I was in charge of the clerks who made the entries and they were made under my direct supervision. The records made on April 13, 1922, have been under the custody of myself and the vault custodian since that time. The vault custodian is also connected with the firm. I produce the records so removed from the records by myself from the vault. The records so produced are the trader's report of the sale of 100 United States Liberty 3½ to the Dominion Bank on April 13th.

When a trade is made, when bonds are either bought or sold, the trader makes a slip called a report. The trader is an employee of the firm and makes the original report that he has made a purchase or sale. Then we have a blotter sheet carried in loose-leaf form in one of our books. It is a book of first entries. It is the journal. I produce the sheet from the blotter for April 13, 1922. We also have a "received blotter" which is a book of original entry of all the bonds purchased and received on April 13, 1922. I also produce a ledger sheet into which these entries were finally posted, which is not a book of original entry but a book made from the other records. I have also the trader's purchase slips of the same 100 bonds that were sold to the Dominion Bank which were received on that day; in other words the incoming sales and outgoing purchase slip. I have examined all of these records to ascertain what clerks made them. None of the clerks who made them are now in the employ of my firm. I have made inquiry from the partners and others with regard to them in an effort to ascertain in whose handwriting they are and I have not been able to identify the handwriting. I reorganized the department and nobody is there now who was there in 1922. I have no idea where these clerks now are.

494 The bonds covered by the sale to the Dominion Bank are entered on both blotter sheets I produce. The entry and the sale to the Dominion Bank refers to a purchase on the received blotter, in other words, we delivered them from those bonds we had previously purchased. Both of these records, the incoming and outgoing, contain the numbers of the bonds and it was the duty of a clerk to enter them coincidental with the transaction on these blotter sheets. I point

out the numbers of the bonds as entered as sold to the Dominion Bank, two lots of 50,000 each. I mark the numbers as entered by our clerks opposite the transaction.

(The numbers marked by the witness are 1144251 to 300 inclusive, and 1144101 to 1144150 inclusive.)

Papers produced by the witness marked as one exhibit.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

495 Cross-Examination.

The place from which I gave the numbers of those bonds appears on this exhibit in lead pencil in the next to the last column on the first paper of this exhibit. The numbers are always taken in lead pencil. I do not know who made that report of those numbers on the incoming sheet. The lead pencil entries were made when the bonds were received, after they had been purchased by our representative. I do not know who made the first entry, 1144300 and then a line and after that 251. I know what it means. I know it means that we got 50 bonds from 251 to 300. I know that solely because that was the method of recording the numbers. Down at the place where I have marked x in lead pencil I find 1144101 and a line and then 49. That means we received those 49 bonds and also another 1 that is marked 50, making a total of 50 bonds. When bonds go out for delivery after we have sold them the entry as to the bonds that are sent out is made opposite the entry on the yellow sheet, which is the delivery sheet, and the entries there are 50-2L and 50-2LA. That figure is intended for an R. The first one is R—R. L. 1. That means "Received". That refers to another portion of the exhibit. No. 1 and No. 8—L. 1 and 8 I think it is. You see these things are written under great pressure. We have literally millions of bonds coming in and going out every day and in order to save writing these numbers twice we do it in that way because many times these bonds come in at 2:10 and we have to deliver them out at 2:15, or otherwise fail on them as a result. The first entry of fifty "2-R" means line 2 in the receiving sheet. It refers to "L." and that means the Liberty blotter, and "R" means received on the Liberty blotter, line 8. When you say you do not see any "1" but do see a "2", I reply there is a "1" there. You see, here is a "1". He has made the L-1 practically together. When you say I interpret it that way I reply I know

it is that way. When you point to a figure which you call a "2" I state it is an R. That is "Received". That means "Received blotter".

I stated that I cleaned out that department, discharged practically all of the men that were connected with the sheets constituting this exhibit. That was one of the departments that I reorganized completely. I discharged those employees for incompetence.

496 The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

497 Plaintiff offered in evidence the original record sheets of Salomon Brothers & Hutzler, produced and identified by the witness Healey, consisting of receipt and delivery sheets of Salomon Brothers & Hutzler, being plaintiff's exhibit 141.

The received sheet is ruled in columns, the first column showing the number, the second from whom bought, the third the amount bought, the fourth the description, the fifth the price, the sixth interest, the seventh the total amount in dollars, the eighth the commission, the ninth debit to customer, the tenth debit to bond ledger, eleventh debit to general ledger, twelfth the account and the thirteenth the numbers of the securities. The sheet is kept in lines designated 1, 1, 2, 3, 4, 5, 6, etc. The only entries on the sheet, which is stamped with the date Thursday, April 13th, 1922, which are relevant to the issue in this cause are those appearing on the first line and on the 8th line. That appearing on the first line shows the receipt from a seller designated as S91 of 50 3½% bonds at 99.94, with interest, the total payment being $50,543.61, and the numbers of the bonds so bought being 1144251 to 300 inclusive. Line 8 shows the purchase from the same seller of 50,000 of 3½% bonds at 99.94, with interest making a total debit of $50,543.61, and in the column opposite said entry headed "numbers" appear the numbers 1144101 to 49 and 1144150. On the reverse of the said sheet appear various lists of numbers referring to the various lines on the front of the sheet where the lists of numbers were evidently too long and too scattered to be entered in the columns headed "numbers".

On the other sheet, which is marked "to deliver" and stamped "Liberty cage" also stamped April 13, 1922, ap-

pears in line 2 an entry of sale and under the column "To Whom Sold" "Dom. Bk. of Ca." 100—3½% bonds at 99.90 and interest, and opposite is the entry under the column "numbers" the figures "50 as L1—50 as L8".

Said exhibit was received over the objection and exception of the defendants and subject to the right of defendants to move to strike the same from the record.

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498 Testimony of JAMES MCGRATH, a witness called on behalf of plaintiff.

Direct Examination.

I live in Brooklyn, New York, am and have been since prior to April, 1922, Assistant Cashier of Walker Brothers, a partnership, conducting a commission business in stocks and bonds at 71 Broadway, New York. I was assigned to collect or take up any great amount of bonds and deliver them myself. I believe that I went to the Central Union Trust Company of New York on April 13, 1922, and received $100,000 of bonds. I went with them to the Dominion Bank, 51 Broadway, and delivered them there. I counted them at the Central Union Trust Company, but not at the Dominion Bank. I took them directly from the Central Union to the Dominion Bank. I have no record of the numbers.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

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499 Testimony of F. ZEITLER, a witness called on behalf of plaintiff.

Direct Examination.

I live in New York City, am and since 1922 have been Cashier of Rhoades & Company, brokers. The records of Rhoades & Company were kept under my supervision. I produce the original record of certain transactions on April 13, 1922. These are the cage records of receiving and delivery of 50,000 of 3½% bonds. The blue one is the sale and the yellow one is the receiving. On the blue or sale side there are certain figures in lead pencil. They are in the handwriting of Robert Olson. On the delivery side there is on the face of the typewritten memoranda the words "First Nat. Bk." They are in Mr. Phelan's handwriting. On the back is a list of numbers in Mr. Coffey's handwriting.

In the usual course of business it is the practice to enter the numbers of the bonds on either the delivery side or the receiving side, whichever happens to be available.

The above two sheets marked for identification Pl. Ex. 142.

I produce the cancelled check of Rhoades & Company to the order of the First National Bank for $50,188.75, dated April 13, 1922, which is the check that purchased these bonds. (Check included in Pl. Ex. 142). I have here also a letter confirming the sale to us of these bonds from the Trust and Savings Bank of Chicago. The records which I produce were kept in the regular course of business by clerks in our employ at the time the transactions were made, which clerks had knowledge of the matters they recorded.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

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[480] Testimony of ROBERT F. OLSON, a witness called on behalf of plaintiff.

Direct Examination.

I live in New York City and am Securities Teller of Hibernia Securities Company. In April, 1922, I was in the employ of Rhoades and Company. I have examined the yellow sheet, being part of Exhibit 142, and I recognize the words "First Nat. Bk." as in the handwriting of William Phelan. The words opposite the words "First Nat. Bk." are in my handwriting. The blue sheet is the delivery sheet. The entry referred to shows that the entry is of bonds received from the First National Bank and is made in order to identify the sale with the receipt.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

[480a] Testimony of CHRISTOPHER A. COFFEY, a witness called on behalf of plaintiff.

Direct Examination.

I reside in New York City, am a clerk and broker. In April, 1922, I was employed by Rhoades and Company. On

Cashier's memorandum of receipts (Pl. Ex. 142) the numbers there appearing are the numbers of the bonds that I received and put on this paper concerning the quantity. I counted to see if I had the right quantity of bonds and then wrote the numbers on the back of this received slip and then handed the bonds and the received slip over to the check clerk and the bonds were turned over to the delivery clerk and he put the contra entry on the delivery memoranda of Rhoades & Company.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

501 Plaintiff offered in evidence plaintiff's exhibit 142, being the papers produced, identified and marked during the testimony of the foregoing witness, consisting of the following:

To Receive — Cashier's Memo

FAIL

First Nat Bk — For Whose

From Whom	Quan.	Description of Security	Price	Int	Amount	Comm	Account	Amount	Account
1st Trust Sav	50 M	(Del 4/13 Int Runs) Lib 3½	99 34	573 61	49620	00	50193 61	Liberty	

Security Numbers — Less — 4 86

50186 75

(On reverse side)

570742 9	1222 528	273391 5	315308 10	1222460 5	
1222472 9	316469	1214821	972847	923287	92785 6
341 788	341786	340717	272823	972848 9	972401
972411	1222489	1222493 4	148544	934653	

Check as follows

No 108342 — New York Apr 13 1922

Rhoades & Company
27 William Street

Pay to the order of First National Bank — $50188 75

The sum of $50188 75 cts — Dollars

RHOADES & COMPANY
Per Wm H Whitcomb, Atty

To the Bank of America
New York

To Deliver Cashier's Memo

Date

To Whom	Quan.	Description of Security	Price	Int.	Amount	Comm.	For Whose account	
							Amount	Account
Dominion Bank	50M	Lib 1st 3½	99 70	573 61	49850 00		50423 61	Liberty

App 1st National Bank

Capital & Surplus $11,750,000 00

First Trust and Savings Bank

Monroe and Dearborn Streets,
Chicago April 12, 1922

502

Messrs. Rhoades & Company,
27 William Street,
New York.

Gentlemen:

Confirming our telegram of today, we have requested the First National Bank of New York to deliver to you the following Liberty and Victory Loan Bonds, aggregating $650,000, upon payment for our account of $661,773.15, in accordance with the statement following:

$ 50,000	1-3-1¼s	at 99 24	$49 620	
		Interest	568 75	
				$50 188 75
30,000	3-4-1¼s	" 99 52	29,856	
		Interest	95 62	
				29 951 62
70,000	3-4-1¼s	" 99 54	69,678	
		Interest	223 12	
				69 901 12
50,000	4-4-1¼s	at 99 58	49 790	
		Interest	1,044 79	
				50,834 79
200,000	V-4-4¼s	at 100 88	201,760	
		Interest	3,087 50	
				204 847 50

250,000 V-4 ¾	at 100 86	252,150	
	Interest	3,859 37	
			256,009 37
$650,000	Total		661,733 15

Yours very truly,
F. L. PORTER,
Manager

AT JEM

Said exhibits were received in evidence over defendants' objection and subject to the right reserved to defendants to move to strike the same from the record.

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503 Testimony of SAMUEL A. BROWN, a witness called on behalf of plaintiff.

Direct Examination.

I live at Leonahurst, New Jersey. I am Assistant Secretary of Central Union Trust Company, New York City, and was in 1922. On April 13, 1922, that company sold a lot of bonds out of a number of estates for which we were executor or trustee. We sold on that day bonds out of the Hopkins Estate, $100,000. I did not see the bonds. I saw a memoranda to deliver bonds to Walker Brothers. I produce it. It is the kind of memoranda we use in all such transactions in trust estates. I also produce a bill of sale and also a memorandum on the letterhead of Central Union Trust Company of certain numbers.

(The three papers marked for identification Pl. Ex. 143.)

The first of the papers identified was written by two of our clerks, A. B. Kelly and Edward Bigoney. I have no personal knowledge of it except that I brought it from the records. As to the memorandum containing certain numbers of bonds I cannot swear I know who made it. It was made by a clerk in the regular course of business under my direction and was made for information as to the numbers of the bonds.

Cross-Examination.

The first sheet was made by two clerks, or under the direction of two clerks. I do not know who made the typewriting on it.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

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504 Testimony of A. B. KELLY, a witness called on behalf of plaintiff.

Direct Examination.

I reside in New York City; am in the garage business. In April, 1922, I was employed in the Securities Division of Central Union Trust Company. I recall a delivery of 100,000 of bonds to Walker Brothers' representatives on April 13, 1922. On the bill of Walker Brothers the number in blue pencil, 3154, was made by me. I made the delivery to Walker Brothers' representative. At the time I made that delivery I had a memorandum of the transaction and a memorandum of the numbers of the bonds 100,000 of those Liberty 3½'s. I had a list of the numbers with the bonds. The list of numbers, I believe, was made in our department by Miss Fibben. It looks like her writing. I do not know where she is now.

Cross Examination.

I have been out of the trust company a year and a half and in the garage business. I made deliveries of bonds every day I was with the Central Union Trust Company, thousands and hundreds of thousands worth of bonds to various brokers and bankers in the business district of New York. I would not remember any particular delivery from my memory. I do remember this one from memory. I would not have remembered it if I had not been shown the papers. I was shown the papers just before I came in here today. I identified the transaction because of my own figures on the papers; I mean the figures "3154, Trust Company" in lead pencil in an angular fashion across this April 13th, 1922. I have also this paper which will show those bonds were delivered and were checked up. I checked the whole list up from this bill. My initials are at the top "A B K". There is nothing on the smaller, or third sheet, which has any of my figures on it. The total recollection I have of the transaction is "3154" on the paper bearing the name of Walker Brothers, and the initials "A B K" on the larger sheet. There is nothing on thes maller sheet which has any of my figures. The figures "3154" at the top of that sheet are Mr. Bigoney's

figures. I know his handwriting. So far as the num-
505 bers are concerned I may have had something to do with checking the bonds, but I don't remember.

Redirect Examination.

The paper shown me, being a credit memorandum headed "Central Union Trust Company of New York, Personal Trust Department, 3154 Zoe Hopkins 41322" is all my work and refers to the same transaction. On the larger memorandum shown me before there are certain members noted and certain check marks. I blieve if my signature or my initials are here I checked the numbers from that slip. I would not say I checked the numbers with the bonds. I probably checked from the slip to the credit memorandum.

(Credit memorandum added to Ex. 143 for identification.)

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

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506 Testimony of E. F. Bigoney, a witness called on behalf of plaintiff.

Direct Examination.

I live in Brooklyn. In 1922, I was employed by Central Union Trust Company as head of the Securities Department. I had charge of the outgoing securities, as well as of the department. Referring to a memorandum in typewriting purporting to show a delivery from the estate of Zoe C. Hopkins on April 13, 1922, such a delivery was made from the account of George B. Hopkins for the account of Zoe C. Hopkins. I remember the transaction.

In the usual course of business, where securities were to be delivered out by the company, it was the duty of the man who made the delivery to make a memorandum of the numbers of the securities taken from the estates and delivered out. The figures on the memorandum identified as coming from the company's record bearing serial numbers are in the handwriting of an employee in my department, Miss Gibben, who is no longer in the employ of the company and who, I believe, is not living in New York. That memorandum was made at my request and then returned to me with the bonds and was kept as a memorandum of the bonds delivered, so that we could make the record with the broker's bill. The other

memorandum that Mr. Brown produced, which he stated was a broker's bill is a bill for those same bonds. I know the bonds were delivered to Walker Brothers and sold to Walker Brothers. The first sheet produced by Mr. Brown shows that I approved of the transaction and initialed it, and also the memorandum of numbers contains my figures showing the trust account. The number "3154" is the trust account of Hopkins.

Cross Examination.

My check on this indicates that I approved of the transaction. It does not mean that I checked the figures of the larger sheet, and my check on the sheet bearing certain numbers does not indicate that I compared the numbers. I do not know of my own knowledge, except as I rely upon this particular sheet, what the numbers of those bonds were. I do not know the numbers of the bonds delivered of my own knowledge. I believe Mr. Kelly made the delivery.

507 The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from record.

508 Plaintiff offered in evidence Plaintiff's Exhibit 143, being certain records of Central Union Trust Company, as follows:

Outgoing Securities Quadruplicate

Entered Card 55 Index ——Approved AM No. 27935

SK1089 Morristown Trust Company 4 13 22 $5,000

Del'd to Coggeshall & Hicks against payment of $5,249.81

$5,000. Union Tank Car Eq. 7s due 1930 #4716 20 4714 F Al

3063. Est. of Jacob Wertheim 4 13 22 $40,000

Sold thru Hallgarten & Co.

400 Shs. Austin Nichols & Co. Common no par 100 Shs. at 25-1 2 100 Shs. at 24-3 4 200 Shs. at 25 less B T CTF. #2337 40

for 100 Shs. each.

3154. For Zoe C. Hopkins 4 13 22 $100,000.

Sold thru Walker Bros at 99.88 and int.
$100,000 U. S. A. 1st 3-1/2s due June 15, 1947, J/D 15
#782163/200
782301/50 782426/7 782446/50 924735/9

Central Union Trust Company of New York.
Checked ———
Credit Cash Book ———
Ledger ———

3154 Personal Trust Department
Trust No. Trust Account. Date
Zoe Hopkins 4/13/22

Sold to Walker Bros.
100 U. S. A. 1 3-1 2 at 99.88 99880
Less Com
99880 Principal
3 Mos 28 Days Accrued Interest 1147 22 Income

A. B. N. Total 101027 22

509 Memorandum.

Central Union Trust Company of New York
80 Broadway.

782163/200 782301/50 782426/7 782446/50
924735/9

New York., April 13, 1922.

Bought of
Central Union Trust Co.
By Walker Bros.
71 Broadway.

Telephone Bowling Green 7380

100# Liberty 3-1 2	99.88	99880.00
Interest		1147.22
		101027.22

.....

Received from Walker Bros.
Shares ———

———

Said exhibit was offered and received in evidence over the objection and exception of defendants, and subject to the right reserved to defendants to move to strike the same from the record.

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510 Deposition of HENRY SMITH OSLER, a witness on behalf of plaintiff.

Direct Examination.

Taken pursuant to rule granted at Toronto, Canada, November 25, 1924.

I reside at Toronto; am a Barrister. I am not able to answer whether at any time I was President of the Continental Trading Company, Ltd. That is a matter of privilege. I think it comes under the privilege that I have to claim
511 on part of my client. I had to carefully consider the limits of the privilege claimed and so that they might be stated accurately I have prepared a statement showing exactly what I think I can tell you and what I cannot and if it suits you I will read it now. It is as follows:

"About the middle of November, 1921, I met a gentleman in New York in connection with this matter. Prior to meeting him I had no information of the nature of the business which he subsequently discussed with me and which, as will appear from this statement, was legal professional business and had to do with the purchase and sale of a very large quantity of crude oil. This being an extremely speculative commodity and the oil business being operated under most competitive conditions, the necessity for confidence in connection with the matter was apparent, and in fact my said client informed me at the outset that he wished it understood as the basis of his consultations with me on the subject that the business was of a confidential nature and that he did not wish his name disclosed under any circumstances. He also told me later that he had associates who were interested with him in the matter and whose names he desired me not to disclose. They then according to my understanding became my clients.

Since the present inquiries were commenced, I have communicated with this client and have received his instructions that his confidence should in every way be respected, including his original instructions as to the non-disclosure of his name and the names of his said associates. In view of this, I am bound to refuse to give evidence of facts of which I ob-

tained knowledge solely from statements made to me by my clients or by carrying out my confidential instructions, except in so far as may be necessary to state facts upon which such claim of privilege rests.

In the course of the conference above referred to, my client informed me that a Colonel Humphreys was the owner of a property in Mexia, Texas, which numerous interests had desired to purchase and that all previous negotiations to that end had failed, but that arrangements had now been made for the purchase of a large quantity of crude oil, the amount mentioned being 30 million or 33 million barrels, to be delivered as produced on the said properties in Mexia or any other properties that the Humphreys interests owned.

My said client further stated that arrangements had also been made for a re-sale of the said oil at an advance of 25 cents per barrel to the Prairie Oil and Gas Company and the Sinclair Crude Oil Purchasing Company and that it was desired that I should act as counsel in preparing and settling the said contracts. He further states that Humphreys had imposed very onerous conditions as to delivery, storage and transportation of the said oil, and that as litigation with him was obviously possible, it was also desired that I should take charge of the receipt and payment of all moneys as legal business so that I might be on the alert to avoid litigation.

In the course of the discussion with my client on the subject of the receipt and payment of moneys, I reached the conclusion that if litigation should take place as apprehended, or even if it should be seriously threatened, my position would be difficult and embarrassing unless the business were incorporated, and I so advised him, advising him at the same time that the incorporation of the company would not prevent me from carrying out my instructions and conducting the business as confidential legal business. The interposition of the Company having been agreed to by the Humphreys interests, the Continental Trading Company Limited was incorporated on application made through my office, the officials being all members or employees of my firm and the Company being in effect merely a corporate clerk in my office.

512 The business of the Company was conducted consistently with this position. No director, clerk, official or officer of the Company outside my office was ever appointed, and I remained in entire charge of the matter as effectively as if no company had ever been formed.

No meeting of the shareholders of the Company was ever held for business purposes, the only meetings held being formal meetings of registered shareholders required by law to be held in connection with the organization and winding up of the Company.

No notice or advertisement directed to shareholders was ever issued or published and no distribution of any cash or assets of the Company to the shareholders thereof ever took place except in accordance with my said instructions.

The incorporation of the Company did not in any way alter the nature or effect of the said business or the way in which it was carried on, and I am advised and believe that the position in respect of the confidential nature of the said business was not thereby altered and that I am bound to refuse to give evidence with regard to the affairs of the Continental Trading Company exactly in the same way and to the same extent as I would be bound to refuse to give evidence regarding the same confidential business, if such Company had not been incorporated.

For the same reason, I would be bound to refuse to produce the books and papers of the said Company. The fact, however, is that, except as below stated, I have no books or papers relating to said Company or to said business, the same having been destroyed with other 'dead' files in the ordinary course of business, such destruction having taken place in my absence.

By way of explanation, I would add that my firm's office lease having been about to expire in this present year 1924 and storage accommodation in my firm's office for old papers having long been overfilled, those in charge of the office took up, soon after the first of this year, the question of getting rid of all useless and dead material encumbering files. As to the records of the Continental Trading Company it appeared that in the early part of 1923 the whole business of the Company had come to an end, and that all proceedings had been taken to bring about as far as legally could be done, the dissolution of the corporation, and that the Charter of the Company had been returned to the State Department at Ottawa with the request that it might be cancelled if and when this could legally be accomplished. Thereupon, and for no other reasons, these papers were destroyed together with large quantities of other papers being the files in at least 9 other matters which for one reason or another appeared to be no longer useful. I was not in the country at the time, or

for several months thereafter, and I had no part in the matter of the destruction of these papers, but if I had been present I should not then have been able to suggest any reason for keeping them or any possibility that they would ever be called for. I returned to this country at the end of May or the beginning of June 1924, and soon thereafter inquiry was made from me by persons purporting to act for the United States of America and I immediately sent for the files of Continental Trading Company, when I was for the first time informed that the destruction of the said records had taken place.

The exception above indicated arises in this way. After a careful search for the purpose of ascertaining whether any books or papers relating to this matter escaped destruction, I have found that there is in the office the ordinary record of work done and disbursements made in the matter and also several stenographers' notebooks."

I would like to put in there what I see should have been put in, that the earliest date of any such stenographers' note-
book is June, 1923. I mention that merely by way of
513 completion. It is of no importance otherwise.

"I have carefully considered all entries in the above and find such entries either refer to private matters on which the firm alone is interested or to matters obviously irrelevant to the issues herein, or to matters of confidence covered by the claim of privilege above indicated, and for the same reasons I must therefore refuse production thereof.

"I am now informed that the matter in respect of which this commission has been issued, is the disposition made of certain United States Bonds amounting to $90,000 which are said to form part of bonds delivered to the said Company and receipted for by the Company by my signature in April or May 1922, amounting altogether to $700,000, and that what is desired is evidence as to the person or persons who received the said $90,000 of bonds from the Company.

"It is suggested by Counsel for the plaintiffs in affidavits filed in the matter of this Commission, that the whole of the said bonds amounting to $700,000 and including the said $90,000 of bonds were delivered to shareholders of the said Company. This necessarily involves an inquiry into the ownership of shares of the said Company. These shares were represented throughout the operations of the Company by coupon share warrants transferable by delivery to bearer and entitling bearers thereof to receive any distribution of cash

or securities in exchange for the appropriate coupon or for the warrant in the case of winding up and final distribution.

"I have no knowledge except as above stated as to the original owners of the said share warrants, and so far as I know, no list of the persons entitled to the shares was ever made.

"I have never at any time had any dealings in this matter with the persons named by my said client as aforesaid, or any of them, except in the course of carrying out my instructions and on the basis of confidence both as to any business transacted and the use of their names in connection therewith.

"I have not now and never had any knowledge or information as to the ownership of the shares of the said Company at any time or as to the receipt by any such owners of any assets of the Company except that obtained by confidential statements made to me by my said client or by carrying out his confidential instructions and exclusively by reason of such instructions. I am therefore advised that I am not at liberty to give evidence with regard to any such matter.

"With regard to the other witnesses named in the Order of the Hon. Mr. Justice Middleton of 30th October 1924 and the Appointment of the said Commissioner herein dated 14th November 1924, I say as follows:—

"The said witnesses are all members or employees of my firm as follows:—Britton Osler, King's Counsel, member of the firm, N. E. Stricklaud, Barrister, member of the firm, Morley H. Breuls, Law Student, employee of the firm, Harold E. Boston, Law Student, employee of the firm, and Louis Samuel, Law Student, employee of the firm.

"The above named witnesses have severally and from time to time but not continuously occupied the position of director of the Continental Trading Company but did so entirely in the capacity of their said relationship to my said firm and for the purpose of carrying out instructions given by me in the conduct of the matters above referred to, which matters, as above stated, always remained in my sole charge.

"The witness named in the said Order and Appointment, Suneva Margaret Fordyce, is my confidential secretary and in that capacity only and not otherwise acted as secretary of the said Continental Trading Company for the purpose of carrying out my instructions in the matter.

"None of the witnesses above named had or could have any knowledge of the matters in question except that which they obtained in the course of carrying out instruc-
514 tions given by me for the purpose of carrying out my confidential instructions in the matter, and I am advised and believe that they are therefore bound to refuse to give evidence touching the said matters in the same way and to the same extent as I am bound to refuse to give evidence with regard to the same confidential business.

"The said witnesses have not, nor has any of them in their custody or possession, any books or papers, the statement above made by myself covering all books, papers or documents which any of the said witnesses ever could have had in their custody or possession."

515 Subject to that statement and to my inability to speak of what I did as President I suppose I was at one time. I acted as President. I haven't before me the minutes. I don't know whether I was at any time Treasurer of Continental Trading Company, Ltd. There are no minutes of the company now extant. I think I did not in fact draw checks in the name of the Continental Trading Company as Treasurer. But I would not like to say positively as to that; I don't know. It is my understanding that payments were made by a direction given to the bank, not by the drawing of checks, but I wouldn't like to say. It is quite possible that I did. The sheet shown me showing receipts of Liberty Bonds from the Agency of the Dominion Bank, 51 Broadway, seem to bear my signature as President; that is what I mean by saying I acted as President at times. Those are photostats. I have no recollection of receiving the Liberty Bonds mentioned on those receipts. Speaking of that lot of bonds, which I understand from what you have told me formed part of the $700,000. of bonds, which we referred to in the affidavits that have been filed in this matter, I think that strictly speaking comes within the claim of privilege, and I probably ought to refuse to answer questions with regard to it, but I should feel very much inclined to say what I can about it, if it is understood that by doing so I do not waive any privilege in the matter which my client might claim. Otherwise than by saying yes or no to a question, I might possibly waive a privilege which I have no right to do or no instructions to do, but if you like to take what I have to say about it without any waiver, I would be quite glad to do so.

It being agreed that as to any statement which I may voluntarily make within what I believe the extent to which I might claim privilege there shall be no waiver beyond the exact matter of those statements, I may say those photostatic copies and the corresponding entries in the bank account which you showed to me, Mr. Roberts, on a previous occasion, appear to be proof that $700,000 of these bonds were delivered at all events in such a way that I gave the bank personally my receipt for them. Now, I can't say anything more than that as I have no recollection
516 about it. That I suppose must be the case because the records are in proper order but I have no recollection whatever touching such distribution at that time. If you were to simply ask me a question as to my recollection of that I should have said that no distribution had taken place until in a general way I would say nearly a year after the incorporation of the Company. Now, I must be wrong about that but the fact is that my recollection is a complete and absolute blank as to any distribution of any kind at that time. I won't say that the bonds which I have a recollection of receiving, at whatever time they may have been received, were received by me as President of the Continental Trading Company as those receipts show, because it may well be that these bonds were disposed of by the bank on my order or in some way according to my direction and in
517 order to give a voucher to the bank after getting rid of them I would no doubt sign a receipt in the bank's book before me. I am not able to answer the question whether I have a recollection of receiving and distributing Liberty Bonds in the matter of the Continental Trading Company. I am speaking with regard to this distribution which seemed to interest you more in April and May 1922. I have no recollection of having distributed any of these bonds to anyone. I have no recollection of receiving them at all. It is quite contrary to my recollection that I got any bonds at all, but I must be wrong about that. In response to the question whether I will state what I did with any Liberty Bonds received by me as President of the Continental Trading Company (not specifically this $700,000 of bonds, but any bonds) I have made no statement as to any other bonds at all. I didn't say that I received them at some other time at all. I am merely saying that as to the receipt of bonds and the distribution of bonds in April and May, or at any time in the spring of 1922, I have no recollection. So far as I would speak of recollection, those records seem to be contrary to what I do remember and my recollec-

tion in that respect is doubtless faulty, but I am not making any statement as to the receipt or distribution of any other bonds at any other time.

In response to the question what I did with any bonds received by me as President of the Continental Trading Company from the Dominion Bank I refuse to answer that on the ground covered in my statement. I refuse to answer the question on the ground of privilege claimed in the memorandum I have read. As I said before I do not remember the distribution of bonds in the early part of 1922. It is rather contrary to my recollection of the course of proceedings, but at that time I certainly did not know the owners of these shares warrants, who the owners of the share warrants were, and it is probably relevant at that point to consider who were the original owners of the share warrants, or if that may be considered relevant, still what actually took place about that was that all these share warrants were signed and I don't remember seeing them parcelled up in my office together, but I have since this question was raised —in fact within the last week or ten days— made in-
518 quiries and had a search made to find out if any mailing receipts or express receipts should be found for these warrants, as would be presumably the case—we should on the ordinary course have some kind of registry receipt or registry receipt or express receipt somewhere in the records of the office if these warrants had gone out to the various persons who may have been entitled to them. Now, absolutely the only information that I have, which would not be complete as to that, is the statement made to me by my client which is referred to or stated in that memorandum, namely that he had certain associated with him and I might presume and probably did presume that those associates would be entitled to some interest, but I couldn't tell what interest in the stock of the company as representing their interest in the matter itself following that incorporation. I do not believe that I had anything to do with the actual distribution of those warrants to the various parties because I think that if I had a list given to me that this man was entitled to so much and that man was entitled to so much, and that I had distributed them in any way, I would remember that or have some recollection with regard to it, and I have no recollection with regard to that at all. Therefore it is quite clear in my mind that down to and long past the date of this distribution that we have been speaking of—when I say "distribution" I mean the receipt of these bonds in May, 1922—I had no knowledge of the actual persons who were at that time

the owners of these various share warrants. Of course it does not follow there may not have been changes in the interests between the incorporation and May, 1922, but whether that was so or not is something that is not within my knowledge in the matter. It appeared to me that that statement had a bearing on the question of relevancy of this evidence we are speaking about.

I don't know that my personal interest is relevant here, but as a matter of fact I had a trifling interest, I mean trifling in percentage, both as President of the company and as the holder of an interest in the company I would know in what community dividends were declared, whether in cash or otherwise. In answer to the question in what
519 commodity the dividends declared were declared I think that comes within the privilege claimed. I do not think I am at liberty to speak as to that. Although the Commissioner rules that I [am] must answer, I think it is within the claim of privilege and I must refuse to answer.

In or about November, 1921, a person first took this matter of the proposed oil contract up with me as my client. I must refuse to answer as to the name of that person. With every respect for the ruling of the Commissioner I maintain my refusal to answer.

That is my signature on the letter (Pl. Ex. 136). With reference to this photostat copy of this letter which is now produced I have now read it and I say, on the same understanding as before, that I am reminded by it that the reason why I didn't think there was any distribution for nearly a year was that I thought the loans made to Mr. Humphreys or advance by way of loan had not been repaid until long after that and therefore there could not have been any funds on hand. That was the reason for that idea in my recollection. This letter shows the loan was paid off at that time. In answer to your question that the letter shows there were funds on hand for investment in Liberty Bonds I reply that I am not saying anything more than that the letter speaks for itself. I have no recollection myself independently at all. I have no special recollection of attending a meeting at the Vanderbilt Hotel on November 17, 1921. When you ask whether I remember a meeting at which Robert W. Stewart, Harry F. Sinclair, James O'Neil, H. M. Blackmer, Col. Humphreys of Denver and Senator Thomas, attorney for Col. Humphreys, were present, you are speaking of a date about the time of the meeting or conference to which I have alluded in the statement that has been read and

any meetings I attended then are part of the confidential business that was brought about as stated in this statement and I am not able to make any statement with regard to it. I have already stated in this memorandum that I met Col. Humphreys and his attorney, whoever he is, in New York about that time. In answer to your question as to whether
at that meeting at which the contract was discussed
520 and made, Sinclair, O'Neil, Stewart and Blackmer
were present, I reply that any conferences that I held in pursuance of this business are within the claim of privilege and I cannot answer any questions with regard to them. What I said was that I did meet Col. Humphreys. At all events I met Col. Humphreys' attorney and I have some recollection of seeing Col. Humphreys in connection with this business as to which I was consulted in New York and it is referred to in that memorandum. Then what I said was what followed in the course of carrying out these instructions in the shape of meetings was privileged as being in the course of carrying out the instructions I got from my client and this meeting obviously comes within that business and therefore is privileged. I don't know anything about Senator Thomas. I have a vague recollection that he was the man. Col. Humphreys had some attorney there whom I sat down in conference in the course of settling the terms of the contract. I can't answer any question regarding conferences in the course of carrying out these instructions. I must refuse to do that. I will make a statement with regard to what was done there for the purpose of throwing some light on it if it will be received on the same understanding as before. I don't remember any such conference for any such purpose as Mr. Roberts suggests. What I do remember is that following my conference with the client who introduced the matter to me I sat down for some considerable time with Mr. Humphreys' attorney discussing the language of a proposed agreement and settling the terms of it. For the most part I think we were doing business alone. I do not remember Col. Humphreys taking any part in it. I think his attorney had full instructions in the matter. If there were other conferences at a later time I make no statement with regard to them. I will say this, they were in the course of carrying out these instructions and were part of the confidence of the client.

I don't know whether an agreement was signed at the Vanderbilt Hotel on November 17th on behalf of the Conti

nental Trading Company, Ltd., and on behalf of the Humphreys Texas Company and Humphreys Mexia Company. I identify my signature on a photostat copy of an agreement bearing that date. (Pl. Ex. 122). I don't know
521 whether I executed that contract on that date. I see it has a date on it. The date upon which it was entered into was the 17th November as stated at the top but the actual date of the execution is left blank, for whatever reason that may be, "In witness whereof the parties have hereunto set their hands and seals the blank day of November". I think it would follow that that agreement was not executed on that day. As to the guarantee contract (Pl. Ex. 124) I have no recollection that I was present when that was signed. I make that statement without waiving anything. The fact is I haven't any recollection. I don't think I saw the agreement executed (Pl. Ex. 122). I make this statement under the same understanding. I have no recollection of the guarantee (Pl. Ex. 124). I would not say that I recognize any of the signatures. I don't see any there I recognize. As to whether Mr. H. F. Sinclair was present at the time the two papers above mentioned were under discussion and consideration that is a question which I must refuse to answer on the ground of privilege. But I will make a statement with regard to it on the same terms. It is a fact that I have no recollection of meeting Mr. Sinclair in New York then at all. I don't want to say that definitely for I may be disclosing another lapse of memory. When this matter was first brought up before me I was under the impression and I have been under the impression until quite recently that the meeting held at Mexia, Texas, took place prior to the inception of this business in New York. If I were to speak from my recollection alone I would say that I had a fairly clear recollection that the Mexia meeting, which was a casual one so far as I was concerned, was dealing with some discussion about buying the property and this question of purchase and sale of oil came up subsequently. Now, I have looked into the matter and found the record of the date of this contract and I found when the contract was executed, the date of the contract which is outlined in the affidavit referred to and now made part of this record, and that was what put me on the track of it, and the Mexia meeting was actually subsequent. That has some bearing upon my recollection. If I saw Sinclair in New York he was a total stranger to me. I had never seen him before and did not know him by sight. I don't think I know his name
522 even and it made no impression upon me and I can't visualize him at the meeting with anybody I met in

New York on that occasion. It is quite possible he was at one or more of these meetings and of course I don't know, but speaking from recollection it does not come into my mind at all. As to whether James O'Neil was present at these meetings in New York, I am not making any statement as to any other persons that I saw there. I must refuse to do that. I have merely made this statement as to Sinclair in order to clear up what otherwise might be a misunderstanding.

With reference to your ruling, Mr. Commissioner I perhaps may make a further statement, on the same understanding, as to meetings that took place in New York in connection with this business. I did meet (if it was Senator Thomas) Col. Humphrey's attorney. If he denied he was there I would not assert it at all, but I think I saw him. I also saw one or two, I suppose two, attorneys whom I have never seen before or since and have no idea who they were, in connection in connection with settling these various documents purely in a legal capacity. I saw some at least of the persons named to me by my original client in the matter, whose name I am not at liberty to disclose. Now, when Mr. Roberts asks me the question as to whether I saw an individual there, naming him, I say if he was one of those parties I am unable to give his name because I got that confidentially from my client. If not I am still unable to give the name because I cannot possibly allow Mr. Roberts to ascertain by a process of exclusion what I am not at liberty to give him directly. That is the exact position of it. I don't think that there was ever a meeting with parties on the other side at all. I know of no such meeting. There is one other point I think perhaps I ought to add to that. If I have correctly understood Mr. Roberts' question it is rather directed towards a conference or meeting which was in the nature of a negotiation for an agreement, or something to that effect. Now, I was present at no such conference at all. It is not my understanding that I took part in any negotiation whatever. My duties in the matter began after the negotiation was ended purely in the course of carrying out what had previously been agreed upon and therefore there was no occasion for any
523 conference such as is suggested in the way of negotiations at which one side and the other side were represented. When I was present it was all one side as far as I was concerned. I would say I was present at no conference on November 17, 1921, at the Hotel Vanderbilt at which Blackmer, O'Neil, Stewart,

Sinclair, Humphreys and his attorney, Thomas, were present at which Humphreys demurred to making an agreement to sell his oil to the Continental Trading Company, stating he did not know the company, and at which Messrs. O'Neil and Sinclair in my presence stated their respective companies, the Prairie Oil and Gas Company and the Sinclair Crude Oil Purchasing Company, would guarantee the performance of the contract. I say I was present at no such conference because I don't believe any such conference as described ever took place. Well, on the same understanding I would say I don't remember a conference of that kind. Let me make this statement again, with the same understanding. It is my understanding that the question of the interposition of the Continental Trading Company was my suggestion for the purpose stated in that memorandum, and somebody communicated that to Col. Humphreys. It might have been my client or it might have come up in the course of the discussion with Col. Humphreys and Senator Thomas in settling the form of the contract. I can hardly say I have a distinct recollection on the subject but my idea is that was submitted to Col. Humphreys when I was not there and he came to a conclusion on the advice of his Counsel and that was in some way communicated back to me.

The signature "H. S. Osler, President" on the agreement of November 17, 1921 (Pl. Ex. 125) is in my handwriting. I should not think that paper was drawn in my office. I don't know in whose handwriting the interlineation on the second page is. I think the paper was drawn in New York. Referring to the interlineation on page two if you were to state positively it was my writing I might think I had taken special pains to write it neatly, but I would not like to say it is mine.

I should say that contract (Pl. Ex. 125) was not settled at the same meeting with the other contract (Pl. Ex. 122). Again on the same understanding I make this statement about that whole New York business. The matter was,
524 of course, new to me and I have a clear enough recollection of the inception of it and of my first instructions. Apart from that my recollection of the whole business is extremely vague. I think it occupied several days and I have a vague recollection of meeting some attorneys at some down town office and I should suppose that this had to do with these contracts for the resale to the other two companies and not to the original company. I think the business occupied several days and I am really only guessing when I say

the chances are that these contracts for resale were not settled until quite some time subsequent to the original one—but I am really only guessing at that rather than speaking from recollection. As to who inserted in this contract (Pl. Ex. 125), the 17th of November, 1921, as to whether that date was inserted in error, no doubt that was the date agreed upon by everybody, but that it was actually executed upon that date I don't know. Referring to Pl. Ex. 123, it may be that I never saw it or heard of it, but I cannot say any more than that I don't remember about it. The Continental Trading Company is not a party to it.

In answer to your question as to whether I have refreshed my memory as to what contracts I did draw in my office in Toronto in connection with this November 17th transaction from entries in any register or book in my office, I may say I don't think there was any such entry with reference to any of these. In fact I know there wasn't. I would like to give you all the information I can about it, Mr. Roberts, on the same understanding. Perhaps it might clear the matter up a little if I were to say I think I was in New York for several days without coming back to Toronto and I think it is probably that by telephone all the instructions were given as to the incorporation of the Company and before I left New York I was advised, quite likely on or about the 17th of November, that the Continental Trading Company had been in fact incorporated and that may have been the date, or at all events a date would be apparently chosen subsequent to that, but perhaps I ought to explain as a reason for it my recollection is of the very vaguest with regard to all those matters. I have been practicing law for a great many years and I have always gone on the principle of wiping out of my mind
525 finished business and I am constantly forgetting finished business. I couldn't tell you at this minute any matter in which I was engaged two years ago at the time this business was going on. I don't carry these things in my mind and I am not therefore surprised to find that I can't carry my mind back to these meetings at all to give you any clear recollection of anything I am not reminded of specifically. If I stated whether the contract (Pl. Ex. 122) for the purchase by Continental Trading Company of 33,000,000 barrels of crude oil formed the basis of the capitalization of the Continental Trading Company, that is, was turned in as property for the stock or stock warrants which were issued, it would be merely guessing. I would not undertake to say anything of that kind from recollection. Again, as to wheth-

er there was any cash capital paid in I would only be guessing about that. I might say, speaking of that, and I say this again on the same understanding that the Business of the Continental Company in my view is privileged the same as if no company had been incorporated, but cash capital must have been paid in in some way or other to comply with whatever is required by the terms of the Dominion Statute under which the Company was incorporated. I have no doubt it was done in a regular way but how or just what amount or how it was arranged I couldn't tell you.

I refuse to make any statement as to the dividends or distribution of capital, whichever you may call them, made by the Continental Trading Company. I desire to refer to exactly what I have said in the statement, but speaking in a general way no distributions were made except under the instructions of my client, and with great respect to the Commissioner's ruling I must maintain my refusal to answer. As to whether as President and Treasurer of the Continental Trading Company I distributed to the warrant holders certain Liberty Bonds as dividends on or about May 8, 1923, my answer is twofold. Within the claim of privilege I refuse to answer it, but at the same time I point out to you I have have already stated with the understanding we have some to as to questions of that kind, that I have no recollection
526 of doing so whatever. The letter of April 11, 1922 (Pl. Ex. 136) includes on the face of it a request for the purchase of Liberty Bonds to the amount of $300,000, but it does not bring anything back to my recollection at all. I do not know whether $300,000 of Liberty Bonds receipted for by me as President on May 8th, are the same Liberty Bonds referred to in the letter of April 11th. With respect to my receipting on May 16th, as President, for $302,000 of Liberty Bonds I must refuse to answer whether I took those personally; but with the same understanding I would say I have no recollection of it at all. It does not follow that they were taken by me. With respect to a ledger sheet of the Dominion Bank showing in a certain column of deliveries my signature against a delivery of $[illegible] of Liberty Bonds I may say, apparently that is my signature at the bottom of the column. It is entered in an indefinite sort of way and I would not undertake to say what it means. My answer to that now is, it seems to be my signature, but I would not undertake to say what it means. I have no recollection that would enable me to interpret it at all. As to whether I have stated that at or about November 17, 1921 I knew all, or at least some of

the parties who were interested in the Continental Trading Company, I would not say so. At least I did not say so in so many words. What I said in the statement was that some time subsequent to the first conference I was told the names of some parties who were associated with the client who instructed me originally and interested with him in the matter, and then when we were discussing the question of the ownership of the shares without waiving the privilege I said to you except as I might have inferred from that statement that some of them at least would naturally have an interest. I have no information or no means of knowing whatever except by inference from that statement.

I am afraid I will have to refuse to state the names of persons who were communicated to me as interested in the Continental Trading Company. There was no Continental Trading Company then. As to who were interested in the business I must refuse to answer that as it comes within my privilege. I think it is a fair inference from my statement that the names of certain other people who were interested in the matter was made to me confidentially. Do not
527 understand me to say that at the very inception my client made the statement he gave me the names for the purpose of getting some particular advice as to those particular names because that would be putting it more specifically than I put it in my statement. The whole communication that he made to me was for the purpose of obtaining my professional advice and assistance and I think it would be a fair and proper statement to say that I would not be fully and properly instructed in the matter without his telling me that he had these associates with him. At all events it would be fair and proper to say that that was his view and the reason why he gave me the names as I suppose, and I think it is correct, but I do not think I would have been duly and properly instructed without knowing it and in the course of that discussion and so instructing me he gave me these names with the injunction following upon the nature of the business we are talking about that the names were not to be mentioned in connection with it.

I refuse to state the names of those other persons who, in ___. my original statement I stated sustained in my understanding the relation of clients to me in this matter from the time that I received their names. The privilege I am claiming is the privilege in the right of the original client. The statement as to as to there being clients is, if you please, an understanding following what may be a legal position,

following the statement to me that they were interested or were associates. The original client who came to me in the matter is the man who instructed me and it is in his right that that I claim this privilege. I am not saying that any other parties ever came to me and said "I am your client." It may well be that they would have such a right following the disclosure of their interest but the claim of privilege that we are now discussing is a claim in the right of the client who made the confidential statement to me. As to whether I am claiming privilege with respect of any professional relation I bear to those other unnamed persons I am not making any claim at all. It is not my claim at all, it is the claim of the client. If they had a right all that can be said is I
528 have no right to waive it, but when you ask me the question as to the names of the persons mentioned to me by my client who instructed me originally then I say as to that I got that information in strict confidence and I am quite unable to state it. What I am saying is the client stated to me that certain other persons had an interest with him in the matter and I refuse to disclose their names on the ground of privilege. I point out for the purpose of making the statement complete in my original statement that it may well be that if these other persons did have an interest in him they may have a right to look upon me as clients also, and naturally that it is a legal position that I would have under my eye, but that I think does not affect the question of the right of my original client to have his statement kept in confidence. I must refuse to answer the question as to the names of the other persons who were interested with my original client. With due respect to the Commissioner I am unable to see how if I am bound not to disclose the names of persons mentioned to me in the course of confidential instructions my client loses that privilege because it happens that that statement disclosed to me the fact that they have an interest in the matter and therefore in respect to that interest it may possibly be they have a right to regard themselves as my clients and I have a right to regard them as my clients, and I must refuse to answer. This information came to me from the statetment made by my client and not otherwise. I had no earthly means of finding it out and did not in fact find it out. I was not consulted by them nor advised them.

With regard to the paper which you now show me, it contains my signature. I know that there was a contract of that sort. I had no part in the negotiations at all. I was informed by the same client who instructed me originally that Col.

Humphreys had made some bargain with reference to a cheap lot of oil. There was some reason for it being a cheap lot of oil and he wanted to turn it over to the Continental Trading Company and make a profit out of it for some purpose of his own—I think they were charitable purposes but it is not very clear in my mind. Mr. Humphreys had in mind some charitable purpose for which he wanted 10 cents a barrel and he wanted to turn this over and I objected that it was
529 an outside matter and the Continental Trading Company had been formed for a specific purpose and if they were going outside of my office that I didn't want anything to do with it, as it seemed to me it would lead me into business that I did not understand and finally it was said, well, this won't cause any trouble, it is not any business, the contract has been made and it is merely a matter of turning over this oil and the oil will be delivered—I think it came from the same place, if I am not mistaken, substantially—and it will cause no trouble or inconvenience, and I said all right. I would not like to say from recollection that I was familiar with what the Continental Trading Company did with the three million barrels of oil or any part of it that it received, but I think I know. My understanding of that is, when this matter came to me originally, there was no negotiating done by the Continental Trading Company at all, as far as I know. It was my understanding that when this matter was brought to me it was told to me that the same companies that bought the Humphreys' oil would take this oil over at the same profit to the Continental Trading Company as in other cases and that it was a mere bookkeeping matter and the money would come in for the proceeds of the oil and would go out in payment for it in the same way as the other and make no complication in the business of the Company, but I saw nobody and negotiated with nobody in the matter, and as far as my recollection goes I never mentioned it to anybody except my original client in that way.

It is my understanding that these two companies, the Prairie and Sinclair Crude, in taking this oil from the Humphreys companies had built pipe lines to the Humphreys property, and that those pipe lines either passed through or close by this Western Oil Fields Corporation property, and the oil would simply run into these pipe lines and it was a mere matter of keeping account of it; in other words there was nothing to be done by me or the Continental Trading Company at all. Speaking with the same understanding I

suppose it is correct to say that the purchasing com-
530 panies the Prairie and Sinclair Companies, took over at a profit of at least twenty-five cents a barrel the contract which the Continental Trading Company had with Humphreys and they undertook to indemnify and save harmless the Continental Trading Company from all loss or damage by reason of the contract it had made with Hum-
531 phreys. It is so long since I have seen the contracts, I have never seen them since they were executed. As to whether the activities of Continental Trading Company consisted merely of receiving on the 10th of the month items from Sinclair Crude and Prairie for the previous month's run to the Continental and on the 15th of the month the Continental settled with the Humphreys company for the same amount, I have no recollection. Whatever the contract says about that is the fact. I know in a general way that money came in and went out, but I can't tell you from recollection. I handled these matters as far as they were handled, but just as I was telling you perhaps I ought to say this with reference to my recollection of business matters, a few years ago—I have since these matters came up been on two long expeditions into Central Africa which has rather wiped business matters out of my head altogether and my recollection is extremely vague about matters that took place two years ago. As to whether Miss Fordyce as Secretary of the Continental Company conducted considerable correspondence with the vendor and vendee companies, that matter is again within the question of privilege, but again, on the same understanding, I would say no. I mean to say what correspondence she did conduct was dictated by me entirely. I didn't have very much correspondence. I was in complete charge of this whole matter and I don't suppose it occupied half an hour a month of my time during the time the business was going on, which is probably another reason why I remember so little of it.

Again, on the same understanding, I will explain to you what I know about remittances coming to the Continental Trading Company from the vendee companies—whether they would come to our office here in Toronto. I think occasionally some did come in that way, but my idea is that as a regular thing the remittances were made direct to the Dominion Bank, New York Agency, in New York, and I presume were there credited to Continental Trading Company account. And when disbursements went to the Humphreys companies in payment of the oil they were from the Dominion Bank's New York Agency, upon instructions from me. I

would suppose from my general knowledge of the way this kind of business was done that that was done monthly. I have a general knowledge, not derived from this mat-
532 ter but from other matters. Now, you raised the point and I am in doubt whether it was usually done monthly or fortnightly. I am not quite sure. There is a custom, it seems to me, in the West about that.

I would not say I had any recollection of the matter of when the first remittance came from the purchasers from Continental Trading Company. I have no recollection whether the first large purchase of bonds by Continental Trading Company was made in March, 1922, to the extent of $400,000. I have no recollection whether that $400,000 of bonds, if so purchased, was used in the distribution of dividends to the warrant holders. Again speaking in the same way my idea, such as it is, is that Humphreys got into some—that is, he required more money than he had for developing—that there must have been a considerable delay before the pipe lines could be built there—how long that took I don't know but they are not done in a minute—and that Humphreys borrowed money and that had to be dealt with, and as I said a little while ago if I had to speak from recollection I should have supposed it was nearly a year after the incorporation of the Company before the Company got any money, but these documents that you produce and the bank account seem to show otherwise. All I can say is my recollection must be at fault about that. It is a mere matter of exaggerating the time required for various things. In answer to the question whether if the records show that in March, 1922, I receipted for $400,000 worth of Liberty Bonds for what purpose I received them, I reply, I have no recollection whatever. As I say, speaking from recollection, I would say I didn't get any bonds to deal with for eight or ten months, but I am wrong about that apparently. I have no recollection what I may have done with them. My recollection is quite blank at that time altogether. I cannot give you any other thing I would have done with them except distribute them to the stockholders. You are asking me to guess. My memory is not refreshed on the subject. It is not a case of bringing anything to my mind at all. You show me an entry and I say very likely that shows I am wrong, but it is not a case of refreshing and I do not wish to be understood as saying there was any refreshing of memory on the subject, because my memory is absolutely vague. I don't remem-
533 ber anything at that time about it. Referring to an interview which I had with Mr. Roberts I won't say that

I told you I had a recollection of going to the Dominion Bank Agency and receiving bonds in parcels for distribtuion as dividends. Again I want to say this, that I am coming here and claiming this privilege on a considered view of what the privilege was. I was discussing the matter with you in a more or less confidential way. I do not mean to say there was any confidence that should be—Perhaps not in that way but I was explaining in a confidential way the situation as it appeared to me on the papers you were then producing and whatever statements I made to you they were in accordance with my recollection at that time, but I certainly made no statement to you, or at least I don't think I did and I didn't intend to make the statement and I don't suppose my recollection is different now from what it was then, of any taking of bonds in parcels in the early part of 1922. As you state that you are not referring to a particular time I say that as to anything subsequent to the first six or eight months of 1922, that period is not covered by the explanatory statements I have made to you on the understanding stated. As to the course of business of the company for the whole period of operation I am refusing to make any statement for the grounds stated. In other words, I refuse to state whether I did take down any bonds for any purpose at any time during the period of the Continental Trading Company's operations. That statement is covered by what I stated here that I made no distributions at all for that company in cash or in securities except on the instructions of my client and carrying out his instructions given at the time and therefore I must refuse to answer the question.

As to any corporate action taken by the directors of Continental Trading Company to my knowledge, touching the payment of dividends, either as to time, amount, or the medium of payment, this is another question which is under the privilege, but there is no reason why I should not state it on the same terms as before. My recollection is that distributions were made when instructed and after the distribution had been made I would give instructions to have it entered up on the minutes of the company by way of record. That was the way it was done. It was not done like an ordinary
534 company in which you declare a dividend or distribution and then order the notice to be sent out, or anything of that kind. So far as I know, notice of dividends and their payment was not sent out in this company, and no receipts were take for dividends except the surrender of appropriate coupons for the dividend. The company issued what are known under our law as share warrants, which pass to

bearer without endorsement and bear appropriate coupons for the various numbered dividends, the coupons not carrying any amount in dollars but simply stating "This coupon is for dividend No. 1" or No. 2, as the case may be. The coupons, as well as the share warrants, are under our law payable to bearer and the great bulk of the stock, except the qualifying shares, are represented by share warrants. The share warrant holder has the right at any time, if he so desires, to surrender his share warrants and take formal certificates for stock registered in his name. So far as I know, except for qulifying shares, the shares in this company were represented by share warrants right through its history. Just to make that complete I would say that the voting power to be exercised by the share warrant holder does not necessarily require him to become a registered shareholder. He may deposit his share warrants with the company at such and such time before any meeting and then he can get in turn a certificate or document entitling him to vote, and then after the meeting is over they are returned to him. So he does not have to register in order to exercise his rights as a stockholder.

No stockholders' meetings were held in this company except that necessarily in the original organization and the final winding up the necessary meetings would be held as they would be called for by the law, which would include a general shareholders' meeting. I cannot answer the question whether dividends in this company were delivered to share warrant holders or their representatives by me personally. That question is within the claim of privilege. Any deliveries or payments of cash or Liberty Bonds as dividends were made in accordance with instructions received from time to time from my client. By that I mean there was no regular or understood course that would be followed. The amount to be delivered and the person to whom it was to be delivered were according to instructions of my client, subject to this, that at some time or other I must have obtained from somebody the appropriate coupons so as to keep the account straight. When you ask me if I have a recollection from whom I received these coupons in any instance, I am not able to answer that question. I refuse to answer for the reasons stated. When you ask me if I at any time delivered any 3½% Liberty Bonds to Harry F. Sinclair or anyone known to me to be acting for him I must refuse to answer; but I want to say in refusing, I would refuse to answer the same question as to anybody. I could not identify anybody by a process of exclusion but my refusal covers all

distributions of dividends or capital account. Any such acts, to the extent they were done, were done by instructions from my client and carried out as confidential instructions, and I must refuse to answer. My refusal also applies to my knowledge as to whether Miss Fordyce or any other person in my office at any time made deliveries of any securities as dividends to any person. I will say as to that, so that you may not be under my misapprehension, under the same reservation as to waiver, that neither Miss Fordyce, nor any one in my office, had anything to do with any distributions. I would say that nobody else than myself had anything to do with it. I refuse to answer whether I brought any of the bonds delivered to me as President or Treasurer of the Continental Trading Company to Toronto to make distribution. The transaction with the Sinclair and Prairie companies was outlined to me and not negotiated by me. All the negotiations were over when the matter came to me. At the time this was given to me the Continental Trading Company wasn't in existence and had not been thought of. As to the contract by which Continental Trading Company sold what it had purchased to the two vendee companies (Pl. Ex. 126) my recollection is that I drafted it, but it is not so certain that if another man said he did I would not be in a position to contradict him. I met lawyers for each of the companies (Prairie and Sinclair Crude) I think in conference in New York as to the terms of that contract. I have no doubt that they were named to me at the time I was introduced, but I had never seen them before or since and I don't know who they were.

Referring the guarantee (Pl. Ex. 124) I say, speaking
536 from recollection I can say nothing about that guarantee. In fact if you had asked me that in your preliminary questions I should have said there wasn't any such document. My recollection was that the guarantee was really effected by the fact that the contract for the repurchase of this oil or the resale of this oil was in the identical terms with the Humphrey's contract; in other words the purchaser agreed in that contract by which he purchased from the Continental Company to carry out all the terms of the original contract and that that was in effect a guarantee in that way. In other words I had quite forgotten that a separate paper of guarantee was given to Mr. Humphreys.

On being shown the assignment of May 26, 1923 (Pl. Ex. 126) I note that the officers named at the end of the signature of the Continental Trading Company are clerks in my

office. I would not say that I recognize their signatures, but I have no doubt it is their signatures. All I know of their being officers of Continental Trading Company at that time —May 1923—is by looking at the agreement. The form of caption to the agreement is such as we would use in drafting an agreement in our office. I can't tell you whether that agreement was drafted in our office here in Toronto. I do not think, according to my recollection, that I took part in any negotiations for that contract. I wouldn't like to say positively to that but I don't think I did, except so far as this, that the sale originated in a suggestion made by me. The idea of it came from me and I originally suggested the sale. What happened was this; the whole situation in April or May of 1923—I can't tell you the date when this came up, but I had been away and it was shortly after I came back, and the whole situation had changed in several very important respects from that which had existed when the original business was transacted. In the first place the general shortage of crude oil and the consequent anticipated rise in price had not taken place. Instead of crude oil running short and Mexico drying up there was a flood of oil from all directions, and new discoveries being made, and the price of crude oil instead of going up very largely above the $1.50 or
537 $1.75 price had fallen below it, so that that contract had become an onerous contract as regards these purchasing companies. Then exactly what had been anticipated in the beginning with regard to litigation had turned out to be a very alarming feature of the situation and was so bad that if I were to say dozens or scores I don't know if that would be quite correct, but there were a great many threats of litigation from the Humphreys' Companies as against the Continental Trading Company brought to my notice, claims that the purchasing Company was not carrying out the contract and that the pipe line was not doing business and the tanks were not doing business and that oil was not being taken according to the terms of the original contract. I don't know whether very large sums of money were mentioned in dollars or merely claims made of very large unstated damages, but Humphreys was making perhaps extravagant but very large claims for damages for breach of that contract, and it was quite apparent to me that if the Prairie Company and the Sinclair Crude Oil Purchasing Company desired to get out of those contracts their obvious course would be to, perhaps not flatly and boldly refuse to carry out the contract but to make things very difficult for Humphreys so that he could not get his payment as and when he was expecting it

and not take the oil as and when they wanted it. That would lead to litigation and I have a horror of litigation out in the West. I know enough about it to know it may go on for ever almost and it would be very difficult and embarrassing situation. Then there was the further difficulty that I knew—and I couldn't say I have a specific recollection as to the amounts for I have not—but I do remember that the returns being made from time to time showed that the production of the Mexia had gone down very considerably and it seemed to me that there was no possibility or no probability, perhaps I better say, that anything like the original stipulated amount of oil would be gotten out of the property because there was a very large amount of oil—I have forgotten exactly—that had to go to somebody else that would not come to the Continental, and that under the terms of that contract it was extremely improbable that 33 millions about that would ever be gotten. Now, I communicated that to my client,
538 the same client that spoke to me about it originally. I don't think I met him casually. I think I met him by some special appointment and I drew his attention to it pointedly and I think I said then, as I would say now, I don't want to impute any (intentions) to break the contract to either of these companies, but I did not know the executives in these companies, all I know was if they wanted to get out of the contract that would be the way they would take to do it, and that would mean litigation and trouble and I suggested that it would be advisable to sell the contracts if they could be sold, and probably these companies or possibly at all events these companies would act very differently in carrying out the contract if they were the owners of this contract than what they might have acted if they were not the owners. In other words if my guess was right and anything of the kind was in question then the moment they had the whole contract themselves they could act independently and they might act very differently. That is the substance of the advice that I gave them leading up to the practical advice that if it were mine I would endeavor to sell it. I couldn't tell you how long after but some time after that I met him again and was informed that an arrangement had been made—that this was communicated to each of these companies the executive officers of these different companies, and I don't think anyone ever told me who suggested it but at all events when this came back to me it was that a bargain had been made, either a bargain or an offer, that these companies would pay $200,000 apiece, I think was the amount. It will be in that contract, no doubt. Now there again my recollection is that I

prepared an agreement with regard to it and I saw one of two men in connection with, I think attorneys for the companies, in New York. I cannot say that my meeting was in the Sinclair Building in New York. I would have said at the Vanderbilt Hotel although at the same time I wouldn't like to say definitely. I am afraid my memory is defective on that subject. I think either in connection with the original contract of purchase or this contract, if the Sinclair Crude Oil Purchasing Company has an office in the
539 Sinclair building, as I would suppose it would—I don't remember where it was. I certainly met some attorney in his office and it was somewhere downtown in New York. I don't know if it was Mr. H. L. Phillips. I think I met Mr. Phillips somewhere out West, but whether he is with the Sinclair Crude or Prairie Company I don't know. I don't know whether the negotiations lasted throughout the whole day, but I don't think so. You see my very strong recollection is, unless there are any details in that contract outside of the lump sum of payment, I wouldn't suppose so. My recollection is that my instructions were that a sale at that price had been agreed upon and my business was to carry it out, but if there were any details in connection with that questions likely they were threshed out between the attorney and myself, but [whenever] I met I am quite sure I met as an attorney. Speaking from recollection, I was told that this sale price had been agreed upon. I speak with a great deal of hesitation because my recollection is very hazy upon everything except the fact that this whole thing initiated in my suggestion; I remember that very well, because it was a matter and gave me a good deal of care and the situation worried me and I thought it out with a considerable amount of care before I made the suggestion to my client and therefore I remember that clearly enough, but the rest of it is very hazy. Replying to your question whether I based my suggestion upon the fact that litigation might disclose who composed the Continental Trading Company, I answer not in the slightest degree. That never came into consideration. I don't suppose I remember at the time that the Prairie and Sinclair companies had both guaranteed the performance to the Humphreys companies. Of course, I knew that that was substantially so because I knew that they had repurchased the oil and that the contract for repurchase obligated them to carry out on their part everything that the Continental was obliged to do in the interest of the Humphreys

companies. I suppose I had in mind how much oil had run under the contract. I would know then how much had run.

I have said that my connection with the Continental Trading Company's affairs was merely half an hour a month sitting in my office dealing with money coming in and going out.

I said that in a general way because I really [I really]
540 had nothing to do. The money was paid into the New York office and the money was paid out through the New York office and every now and again I would, no doubt be advised as to what had been done but that was not a matter that took any time or impressed itself on my mind at all. I kept in touch with the amounts of oil that were being from time to time transferred under this contract.

You say you call my attention to the fact that on May 16, 1922, $8,000 of Liberty Bonds appear to have been transferred to my personal account by the Dominion Bank and then resold by that bank to the Continental Trading Company. That does not refresh my memory as to whether the May 16th transaction was a distribution of Liberty Bonds in dividends. I have no memory about it at all. It is there for what it is worth. I mean I see what the record says, but it does not refresh my memory in the matter at all. My interest in the Continental Trading Company was substantially in the proportion of 6,000 to 300,000 or 8,000 to 400,000, viz. 2%—2% or a little less. You suggest that if these documents state the fact accurately on each occasion when Liberty Bonds were distributed there went into my personal account 2% of the bonds so distributed. I can't say that that refreshes my memory as to whether those distributions of Liberty Bonds were by way of dividends. I have no memory of those distributions at all. I see the argument you suggest from the entries, but I can't say anything beyond what is in them. Referring to your suggestion that $6,000 of Liberty Bonds appear in my personal account under date of May 8th or 9th and $8,000 of Liberty Bonds go in and out of my personal account on May 16th, I cannot tell you from recollection whether those were dividends received by me on stock held in the Continental Trading Company. Those entries speak for themselves. I do not think my recollection is worse as to that matter now than on the occasions when I several times talked to you and Senator Pomerene about this matter; but when I talked to you and Senator Pomerene about the matter you were showing me my personal account and I had no objection to discussing my affairs under the circumstances and I quite likely may have drawn an inference and

expressed an opinion to you as to what those entries meant.
I am not prepared to express that opinion as a witness.
541 As a witness I am only speaking as to facts and there they are. I did not certainly tell you anything about my recollection with regard to those transactions because I am utterly surprised at them and it doesn't hitch together at all. I cannot say as a witness I have any recollection when I haven't. There are the entries and you are in just as good a position as I am to draw the inference.

My position as to whether these figures refresh my memory on the question whether there was a distribution is quite plain. I am quite unable for the reasons I have stated and I have refused to answer any questions touching the distribution of moneys. I have voluntarily made a statement with regard to this distribution or these entries or any distribution which may have taken place and the dealings with these bonds in these receipts in May, and what I have stated is fact but I haven't any recollection about dealings in bonds at that time at all. To your question as to whether I have any recollection of dealings in bonds at any time by distributing them as President of the Continental Trading Company in any manner other than dividend distribution, my answer is, I am not in a position to make any statement about the matter and I refuse to answer the question. I refuse to state whether I paid my contribution to the capital of the Continental Trading Company in cash. I cannot answer that question without disclosing all transactions of the Continental Trading Company. I refuse to answer. I refuse to answer whether I personally handled the final distribution of the assets of the Continental Trading Company. I refuse to answer whether I distributed the assets of the Continental Trading Company to persons who then held stock or share warrants, or who produced them at the time of its winding up. At the times I have mentioned during the years 1922 and 1923 I have had several other transactions going through my office of the same magnitude in money as these transactions of the Continental Trading Company, Ltd. The size of the Continental Trading Company transactions would not impress itself upon my mind at all. I can remember at least three transactions which involved quite as much money that I had sole charge of at that time and which caused me a great deal more work and trouble than this, and I have little recollection of the details of them. I am quite sure
542 that the matter of how dividends were declared by the Continental Trading Company was never a matter of

discussion before its Board of Directors. That was a matter of instruction from the unnamed client. That again is a matter as to which I should be quite willing to explain without waiving the question of privilege. That came about in this way: For some reason,—I can't state clearly what it was, but for some reason it was anticipated that distributions either of capital or income might not be frequent and
543 possibly there might be an accumulation of funds not dealt with and bank interest was very trifling and besides that the company wasn't in business of making money by interest and it was decided originally that all moneys not required for any other purpose should be invested in these bonds, and those instructions having been given originally they were kept up with the bank throughout, and I don't think it ever was mentioned again. I am not in a position to say now how frequently distributions were made. I would say they were not made practically monthly. It is my recollection that the intervals were irregular. Purchases of Liberty Bonds were not made in round amounts so as to be properly and easily divisible among the interest represented in the company. I can answer that subject to the reservation. I know what my instructions were to the bank and the instructions were no doubt repeated from time to time at the request of the bank. My general instructions to the bank were any time there was an amount, we will say an amount like $10,000—in fact I think that was the amount. I think those were the instructions to the bank; that whenever they had a round amount ready then they were to buy Liberty Bonds and keep them there. It had no reference to any amount of distribution or anything else. It was a matter of convenience only, and I [fet] that entirely as between the bank and the brokers. Neither I nor anyone on behalf of the Continental Trading Company made any report to the Dominion of dividends declared or of earnings of the company. I refuse to answer whether I or anyone on behalf of my company made a return for income tax to the United States Government. Let me say this, to avoid misunderstanding on the subject, I think those questions are irrelevant and they are also within the line of privilege claimed, but on the same understanding as before as to waiver I would say this, that whatever was done or omitted to be done in the way of returns of earnings or dividends, or anything of that kind, either in this country or in the United States was done under the advice of counsel in the course of advising what was the proper course to be pursued. There wasn't anything done or omitted to be done with any other motive than deciding

what was the proper thing to do in connection with the affairs of the Company.

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544 Testimony of L. T. RULE, a witness on behalf of plaintiff.

(Stipulation that if Mr. Rule were called he would testify as follows:)

I was a clerk in the employ of the First National Bank of Pueblo in May 1922; am now an Assistant Cashier. On May 29, 1922, M. T. Everhart handed me $90,000 par value in $1,000 pieces of United States Liberty Loan Bonds with the statement of Mr Everhart that said bonds were the property of A. B. Fall, were to be safely kept by the First National Bank of Pueblo for Mr. Fall's account. I earmarked the same and placed them in the vault of the bank. They remained in the vault of the bank for several months thereafter. Subsequently I received directions from someone to forward them to a point in the Southwest; the name of the point I cannot now recall. Prior to forwarding them I detached the June 15, 1922 coupons from each of said bonds. On October 5, 1922, I deposited said coupons to the account of Tres Ritos Cattle and Land Company in the First National Bank of Pueblo, making out the deposit ticket in my own handwriting, upon which deposit ticket, in my own handwriting, appears "From A. B. Fall bonds". I had no information from which to make the entry "From A. B. Fall bonds" except the statement theretofore made to me by M. T. Everhart at the time the bonds were delivered into the custody of the bank. The coupons in question, amounting to $1,575.00, were the coupons for 6 months interest on $90,000 of Liberty Bonds. The credit memorandum or deposit ticket in my handwriting is Pl. Ex. 113.

I subsequently received from M. T. Everhart $20,000 par value First 3½ Liberty Bonds for credit to the account of Tres Ritos Cattle and Land Company, which I deposited to the credit of that company in the First National Bank of Pueblo on October 23, 1922, crediting the account of the Tres Ritos Cattle and Land Company with $101.04 per hundred, and with accrued interest, making a total deposit of $20,456.88, to the credit of Tres Ritos Cattle and Land Company. That transaction is identified by Pl. E. 114.

The said $20,000 bonds remained in the possession of the First National Bank of Pueblo for some time until a
545 sale of bonds was made by the banko n June 18, 1923. At that time I took bonds to the extent of $50,000 par

value from the vault of the bank and on the typewriter wrote the numbers of the bonds to be forwarded to Logan and Bryan of New York, sale being made through a broker in Pueblo named Walpole. The numbers of the bonds so sold by the bank on June 18, 1923, were taken by me and put on a typewritten memorandum which I made of the bonds sold. The memorandum of the numbers of the bonds so sold is Pl. Ex. 115.

I acted as a clerk of the Tres Ritos Cattle and Land Company and was at one time Vice President of it. I resigned prior to 1922.

The M. D. Thatcher Estates Company, held, on May 29, 1922, all of the stock of the Tres Ritos Cattle and Land Company as collateral security for loans, being of a par value of $10,000, 50 per cent of which stood in the name of Albert B. Fall and 50 per cent in the name of M. T. Everhart. Said collateral was returned to Tres Ritos Cattle and Land Company by the M. D. Thatcher Estates Company some time subsequent to May 29, 1922.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

546 Plaintiff offered in evidence over the objection and exception of defendants, and with the right reserved to defendants to move to strike the same from the record, the following exhibits:

Plaintiffs exhibit 113, being deposit ticket produced by the witness Smith and identified by the witness Rule.

Plaintiff's exhibit 114, being deposit ticket produced by the witness Smith and identified by the witness Rule.

Plaintiff's exhibit 115, being the bill for the sale of certain securities by the First National Bank of Pueblo, dated June 18, 1923, together with a list of bonds sold under said bill, produced by the witness Smith and identified by the witness Rule.

Plaintiff's exhibit 119, being the deposit ticket of the M. D. Thatcher Estate Co. in the First National Bank of Pueblo, under date of 7/15/22, produced by the witness Smith.

Said exhibits are as follows:

First National Bank.

Pueblo, Colo. 10/5 1922.

Mr. Tres Ritos C & L Co.

Credit

Date of Your Remittance	—	Amount
U. S. 3-1/2	—	
Cps. 6/15		1575

Collections Paid —

Fm A. B. Fall

Bonds

547 First National Bank

Mr. Tres Ritos C. & L. Co. Pueblo, Colo. 10/23 1922.

Credit.

Date of Your Remittance	Amount
2nd 3-1/2	
Collections Paid.	
C101 04	20208 00
Int	248 88
	20456 88

Bonds Attached to Draft on Logan & Bryan, New York, June 18, 1923, for $50,483.35

Liberty Loan of 1917, $50. denomination, numbered as follows.

1404151, 1244706 1253070 808704 1404143 788042 1244772 717502 786497 1421686 9088.22 1188060 1711812 1188061 -14 at $50

Liberty Loan of 1917, $100. denomination, numbered as follows

434385 502011 495282 977088 807923 607681 680415
680414 907673 907703 607672 619226 681012 681341
607727 434332 619606 681084—18 at $100.

Liberty Loan of 1917, $500. denomination, numbered as follows

190233 190234 190235 190232 54535 54534 189014 189011
189012—9 at $500

Liberty Loan of 1917 $1000 denomination, numbered as follows

211732 211733 211734 240620 240621 1218908 1218907
1218910 1218911 1218912 1218913 1218914 1218915 1218916
1218917 1218918 1218919 1218920 1218921 1218922 1222493
148544 934653 570749 1144148 1144147 1144146 1144145
1144144 1144143 1144142 1144141 1144140 1144139 1144138
1144137 1144136 1144135 1144134 1144133 95809 95672
211740—43 at $1000

548

N. S. Walpole
Investment Securities Date June 18 1923

Bought for
L. Rule.
First National Bank, Pueblo, Colo.

Sold for

Date of Transactions	Quantity	Name of Security	Price on N Y Stock Exchange	Name of N Y Stock Exchange Whom Order was Executed	Commissions and Charged us into N Y S E. and Brokers	Our Com	Total
6/18th	$50000	Liberty 1st 3-½s Interest June 15th to date	101	L A B	31 25	15 63	
							50453 12
							14 60
							50467 72
Logan and Bryan Our commission					50483 35		
					15 63		
E & O E.					50467 72		

It is understood and agreed that all securities carried in this account or deposited to secure the same may be carried in our general loans and may be sold or bought at public or private sale without notice, when such sale or purchase is deemed necessary by us for our protection.

Deposited By
M. D. Thatcher Estate Co

With
The First National Bank

Pueblo Colo 7/13 1922

Form 43 10-21 50M-0

	Dollars	Cts
Gold,		
Silver,		
Currency,		
Items, viz:		
1st 3 ½ Cps	2458	75

Depositors will please name local Banks, or outside points where items are payable

549 Testimony of M. T. EVERHART, a witness on behalf of plaintiff.

Direct Examination.

I live at Pueblo, Colorado; am in the ranch business. I know L. T. Rule, an employee of the First National Bank of Pueblo. I don't recall whether I saw him on May 29th, 1922. I decline to answer whether in that month, as agent for Albert B. Fall, I gave Mr. Rule any propery for safe-keeping by the First National Bank of Pueblo, on the ground that my answer might tend to incriminate me.

I have never been an employee of the United States Government. I have never been in any way connected officially with the Mammoth Oil Company or with Harry F. Sinclair. I had nothing at all to do with the transaction of the making of the lease of Teapot Dome. I decline to answer on the ground aforesaid whether if I had anything to do with any property for Mr. Fall I did it merely as his agent or his messenger.

I am asked the question "If you had anything to do with any property for Mr. Fall you did it merely as his agent or messenger, did you not?" My reply to that question is "No." I desire to state to this court that I did have in my possession certain bonds, about which Government Counsel has interrogated me; I had them in my own right as a principal, and to give further evidence concerning same will, I believe, tend to incriminate me. The questions propounded to me refer to property; I assume that the word "property" refers to bonds. The only transactions we had concerning property were had by me and Mr. Rule concerning bonds, and to give further evidence concerning them I believe I should decline to answer, because to it I cannot testify without the danger of incriminating myself. I respectfully decline to answer whether I was in the Eastern part of the United States in May, 1922. I decline to answer whether I have

knowledge that Secretary Fall received any bonds in May, 1922. I have no recollection of stating to Mr. Rule, when I handed him the bonds on or about May 29th, 1922, that those were the bonds of Mr. Fall.

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550 Testimony of A. S. Booth, a witness called on behalf of plaintiff.

Direct Examination.

I live in Pueblo, Colorado. I am Vice-President of the First National Bank and also Secretary and Treasurer of the M. D. Thatcher Estates Company. I remember a transaction which occurred with Mr. Everhart on May 29, 1922. I bought on behalf of the M. D. Thatcher Estates Company from Everhart $140,500 of Liberty Bonds. I made the posting in the ledger of these bonds and put the numbers in the ledger from the bonds themselves. I produce the ledger in my own handwriting and from that entry I give the numbers of the bonds in question. Nos. 954625 to 954637 inclusive; 782163, to 782200; 782301 to 782350; 972848 and 9; 530386 and 7; 782426 and 7; 782446 to 782449; 782450; 924725 to 924, 739; 530967 to 530970; 530145; 583501 and 2; 570307 to 570, 311; 472526 to 472528; 1222489; 972411; 972401; 972823; 930, 191; 777209; 52649; 199048 all of one thousand dollars each, and 108613 at five hundred dollars. Par and accrued interest was the market price at that time. Part of the proceeds were applied towards the liquidation of indebtedness then owing the M. D. Thatcher Estates Company, as follows: $83,000 of M. T. Everhart, for which we had some Tres Ritos Cattle and Land Company notes up as collateral; $10,000 was applied as against Tres Ritos Cattle and Land Company notes, for which there was no collateral to my recollection; $15,000 on note of A. B. Fall, for which there was no collateral to my recollection. At this period the M. D. Thatcher Estates Company held as collateral the capital stock of Tres Ritos Cattle and Land Company I think; I did not handle that part of it, however.

I did not handle the entries personally, but I know that the balance of the proceeds of the purchase was credited to the Tres Ritos Cattle and Land Company account, viz: $11,523.10, in the First National Bank of Pueblo. It was credited to a temporary account to take care of, as we understood, sundry indebtedness of the Tres Ritos Cattle and Land Company not in shape for payment, $20,916.97. This is the account that was opened in the First National Bank of Pueblo under the

name of M. T. Everhart, Trustee. There was a draft remitted to the First National Bank of El Paso, Texas, for the account of A. B. Fall for $2,209.00. The remaining
551 amount was paid to M. T. Everhart to cover some interest adjustment, $9,112.00.

Cross-Examination.

The $15,000 note of Fall was also signed, or endorsed by Mr. Everhart to the best of my recollection.

Redirect Examination.

I deposited the June 15, 1922 coupons from the $145,000 of Liberty Bonds in the First National Bank of Pueblo, Colorado, on July 15th to the credit of the M. D. Thatcher Estate.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

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552 Testimony of A. D. Brownfield, a witness called on behalf of plaintiff.

Direct Examination.

I live at Carrizozo, New Mexico. I am Receiver of the Exchange Bank of Carrizozo. I have produced the original records of that bank touching a transaction of March 29, 1923. I have the daily cash book. I also have the ledger account of A. B. Fall. I have the original remittance sheet under date March 29, 1923, as delivered to me by the State Bank Department. I also produce a deposit ticket of March 30, 1923.

The testimony of the above witness was received over the objections and exceptions of defendants and subject to the right reserved to defendants to move to strike the same from the record.

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553 Testimony of R. E. Lemon, a witness called on behalf of plaintiff.

Direct Examination.

I live at Carrizozo, New Mexico. In 1922 I was Assistant Cashier in the Exchange Bank at Carrizozo. The deposit ticket was filled out by me in my handwriting (Pl. Ex. 144) offered. I actually handled the securities that are noted

on the deposit ticket, $50,000 First 3½% Liberty Bonds. I clipped the coupons from them and handed them to Mr. Thurmond who was stenographer and bookkeeper in the bank. I also made the entry of that transaction in the book marked "Journal No. 12, Exchange Bank", under date of March 30, 1923. I charged the First National Bank of El Paso the $50,000 covering the face value of the bonds, and also $875.00, covering the value of the coupons I clipped. As to the sheet produced by Mr. Brownfield as the ledger account, no one but Mr. Thurmond and myself made entries on that sheet. They were made with a typewriter. I cannot tell you which entries I made and which Mr. Thurmond made. The entries so made were correct and made at the time the transactions were recorded. When I had clipped the coupons from this $50,000 of Liberty Bonds I handed the coupons to Mr. Thurmond to be written up.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

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554 Testimony of B. S. THURMOND, a witness called on behalf of plaintiff.

Direct Examination.

I live at Hatch, New Mexico. In March 1923, I was employed at the Exchange Bank of Carrizozo, New Mexico, as stenographer and bookkeeper. I do not remember from recollection a transaction in which I handled $50,000 par value of Liberty Bonds on March 29, 1923. The sheet which has been produced here as one of the records of the bank is in my handwriting. It is in the form of a cash letter or transmittal sheet of foreign items going to other banks. When we had foreign items going to other banks the items were simply listed on here. It was in duplicate. This is a carbon copy. The original went to the bank on which the letter was drawn. Refreshing my memory from that sheet in my handwriting, I state that I forwarded to the First National Bank of El Paso, on March 29, 1923, 50 Liberty Bond coupons. The numbers of said coupons were as follows: 1144127, 1144128, 1144129, 570748, 570747, 570746, 570745, 1222477, 570742, 570743, 570744, 1222478, 1144120, 1144131, 1144132, 315310, 315309, 315308, 1222465, 1222464, 1222463, 1222462, 1222461, 1222460, 1222479, 1144122, 1144123, 1144124, 1144125, 1144126, 1144115, 1144116, 1144117.

1144118, 1144119, 1144120, 1144121, 1222528, 273301, 273302, 273303, 273304, 273305, 1144103, 1144104, 1144105, 1144106, 1144107, 1144108, 1144109.

I recognize as being in my handwriting a stub in a book, which stub is a record of insurance on an item consigned to the First National Bank of El Paso. The item was $875.00 worth of Liberty Bond coupons, and the date is March 29.

The ledger sheet marked Pl. Ex. 145, could have been worked upon either by Mr. Lemon or me. If I made any entries upon it they were correct and made at the time of the transaction in the usual course of business.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

555 Plaintiff offered and there were received in evidence over defendants' objection and exception and subject to the right of defendants to move to strike plaintiff's exhibits 144, 145, and 146, exhibit 144 being the deposit ticket of A. B. Fall, dated March 30, 1923, in the Exchange Bank of Carrizozo, exhibit 145 being the ledger sheet of the account of A. B. Fall in the Exchange Bank of Carrizozo, and exhibit 146 being the duplicate of credit returns sheet of Exchange Bank of Carrizozo, New Mexico, which exhibits were produced and/or identified by the witness Brownfield, Lemon and Thurmond, and which read as follows:

556 The Exchange Bank

Deposited By

A. B. Fall.
Three Rivers.

Carrizozo, New Mex., ...3/30/1923

All checks and drafts, except on us, credited to final payment.

Please List Each Check Separately

Currency. .....

Silver. .....

Gold. .....

Checks as follows:

Bonds	50,000 00
Coupons	875 00
	50,875 00

Total, $.....

See That All Checks And Drafts Are Endorsed

557 Exhibit 145 is a ledger sheet and bears the following printed matter at the head:

Sheet No. 1—Name, A. B. Hall—Address, Three Rivers. The sheet is ruled in columns headed:

Old Balance—Date—Checks in Detail—Date—Deposits—Date—New Balance. The sheet shows that the account was opened March 29, 1923 with a deposit of $50,875. The only other deposit in the account is under date of April 7, 1923 $937.52. The other entries in the account have no bearing upon the issues in this case, are difficult to copy as they appear upon the ledger, and the same is not therefore reproduced.

Exhibit 146 is a sheet ruled in columns which are headed:

Number—Drawn By—Last Endorser—Drawn On—Amount and in the last column is a space which is marked "Credit—Returns". At the top of the sheet, under the column "Drawn On" appear certain numbers and writing as follows. Opposite in the column headed "amount" is set down the sum $875. In the column marked "Credit—Returns" there appears this entry: 3 29 1923 To First National Bank El Paso." The balance of the entries on the sheet show various items forwarded for collection, which have nothing to do with the issues in this case. They cannot be reproduced in the form in which they appear on the sheet in type and are not, therefore, copied. The numbers in writing appearing upon the sheet in the column "Drawn on" are as follows:

Drawn On	Amount
U. S. Coupons #1144127, 1144126, 1144129, 570748, 570747, 570746, 570745, 1222477, 570742, xxxxxx 570743, 570744, 1222478, 1144130, 1144131, 1144132, 315310, 315309, 315308, 1222465, 1222464, 1222463, 1222462, 1222461,	

1222469, 1222479, 1144122, 1144123, 1144124, 1144125, 1144126, 1144115, 1144116, 1144117, 1144118, 1144119, 1144120, 1144121, 1222480, 271091, 271092, 271093, 271094, 271095, 1144102, 1144104, 1144105, 1144106, 1144107, 1144108, 1144109 ; 50 Coupons @ 17.50 ea. ; $875 00

Said exhibits were received with the right reserved to 550 defendants to move to strike the same from the record.

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550 Testimony of HAZEL B. PARKINSON, a witness called on behalf of plaintiff.

Direct Examination.

I live at Pueblo, Colorado; am a clerk in the First National Bank. As such clerk I wrote the portion which is in ink on Pl. Ex. 117. I made up the numbers mentioned on that sheet from Liberty Bond coupons. The numbers were correct. The bonds were forwarded to the Federal Reserve at Denver.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

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550 Testimony of H. A. CARLSON, a witness called on behalf of plaintiff.

Direct Examination.

I reside at Pueblo, Colorado; am an employee of the First National Bank. The ink figures on Pl. 116, are in my hand writing. The occasion of making out the paper was the transmitting of Liberty Bond coupons to the Denver Branch of the Federal Reserve Bank. The Liberty Bonds listed by me on this paper were listed correctly to the best of my knowledge and were forwarded with the Liberty Bond coupons to the Federal Reserve Bank.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

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561 Testimony of MARGUERITTA TEADA, a witness called on behalf of plaintiff.

Direct Examination.

I reside in Denver, Colorado. In October 1922, I was employed by the Federal Reserve Bank. I recognized Pl. Ex. 117 as a paper upon which I worked. When the coupons came in they were listed, and they were all stamped with this one stamp and then sent to the Treasury. I would check the coupons that came in with that. I found 90 at $17.50 that should be $875. The amount was correct, but should have been on the other line. It was on the wrong line. The coupons were correct in amount and in number.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

562 Plaintiff then offered Exhibits 116 and 117, which were received in evidence over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record. Said exhibits are as follows:

Exhibit 116 is a letter on a printed letterhead, the heading reading as follows:

Federal Reserve Bank Of Kansas City

Denver Branch, Denver, Colo.

Schedule Of U. S. Government Coupons Deposited

By First National Bank, Pueblo, Colo. Date Jul 19, 1922.

(See Instructions on Reverse Side.)

The face of the sheet contains printed compartments with spaces for the entry in each compartment of Liberty Loan coupons of various denominations of each of the several issues of such bonds, together with a box or compartment for a recapitulation of the totals of coupons of all the various Liberty Loans covered by the individual boxes or compartments of each kind of bond. The first box or compartment is headed "First Liberty Loan 3½% Coupons, Due June 15—Dec. 15." Under this appears three columns headed "Pieces"—O—"Amount" and in these columns there appear under the word "Pieces" figures in ink, under "O" printed amounts, and under the head "Amount" ink

figures. At the bottom there is a space for a total with the word total printed and the figures of the total in ink. This box is reproduced from the letter as follows:

First Liberty Loan 3½% Coupons Due June 15--Dec. 15					
Pieces	V	@	V	Amount	
		87			
10		88		8	80
8		1 75		14	
1		8 75		8	75
140		17 50		2 450	
No. 1		Total		2 481	55

On the face of the letter of advice appears a stamp which consists of a large capital letter C, and within that letter the figures $\frac{1}{\text{Jul } 21}$. On the reverse of the sheet are printed instructions to the member banks as to the filling out and forwarding of the letter of transmission.

563 Exhibit 117 is on an exactly similiar printed form as Exhibit 116. The only differences are the date which is October 11, 1922, the written figures under the designations "Pieces" and "Amount" and the total, so far as concerns the report of First Liberty Loan Coupons.

The compartment covering First Liberty Loan coupons is as follows:

First Liberty Loan 3½% Coupons Due June 15—Dec. 15					
Pieces	V	@	V	Amount	
9		87			7 83
19		88			16 72
30		1 75			52 50
		8 75			
90		17 50		1	575 00
No. 1		Total		1	652 05

The only other difference from Exhibit 116 is that the stamp on the face of the letter consists of a large capital U

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and inside it the words and figures following Oct.

21

Exhibits 116 and 117 were produced by the witness Conway and the witnesses Trada, Ferguson and Carlisle testified concerning entries made thereon by them.

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564 Deposition on Letters Rogatory of HENRY BLACKMER.

Under letters rogatory issued by the District Court for the District of Wyoming, Henry Blackmer appeared before a judge of the Civil Tribunal of the First Instance of the Seine, at Paris, France, on February 21, 1925, and having been duly sworn was orally examined by counsel for the plaintiff and testified as follows:

My name is Henry Blackmer, my nationality American, my address in the United States Denver, Colorado, my temporary address in Paris, Hotel Plaza, 25 Avenue Montaigne. I do not know when I expect to return to the United States. I have no profession in the United States, but was formerly in business. To the question, have you any official connection with the Midwest Refining Company, I reply upon reflection I have decided not to answer that question. I have retired from business and I do not intend to be drawn into this controversy. Because I have done nothing contrary to law, honor or morality, directly or indirectly, concerning this matter, I ask the judge to pardon me if I respectfully refuse to reply to this question or to other questions which may be put to me.

At this point counsel for the plaintiff protested against this reply as not responsive to the question, and reserved the rights of the plaintiff.

The witness stated that he made the same answer to the following questions: What is your profession or occupation in France; have you any knowledge concerning a corporation of Canada known by the name of Continental Trading Company, Ltd.; do you know H. S. Osler, of Toronto, Canada; did the said Osler to your knowledge hold

565 any official position with the Continental Trading Company, Ltd.; of Canada, during the year 1922; did you hold any official position or were you connected with the Continental Trading Company, Ltd., between January 1, 1922 and December 31, 1922, between January 1, 1922 and

December 31, 1922, did you have in your possession stock warrants representing capital stock of the Continental Trading Company, Ltd., of Canada; have you seen the stock warrants of said company; have you had any interest, direct or indirect, in the Continental Trading Company, Ltd. during the year 1922; have you received money or Liberty Bonds from the treasurer of the Continental Trading Company, Ltd., of Canada, between the 1st of March and the 31st of December, 1922; are you acquainted with Harry F. Sinclair; were you present at a meeting held at the Hotel Vanderbilt in the city of New York, United States of America, on the 17th of November, 1921, at which meeting Harry F. Sinclair was present; was Robert W. Stewart present at said meeting on said date; was H. S. Osler present at the same meeting; was James O'Neil present at the same meeting; have you received from H. S. Osler between March 1, 1922 and December 31, 1922, any United States 3½% Liberty Bonds as dividends or profits arising from the Continental Trading Company, Ltd., of Canada; to your knowledge what interest, if any, had Harry F. Sinclair as officer, director or owner of stock warrants of the Continental Trading Company, Ltd., of Canada, during the year 1922; can you say what persons there were who had a financial interest in the Continental Trading Company, Ltd. of Canada during the year 1922; Will you name them; were you present at the discussion and the negotiation of the contracts on November 17, 1921, or on or about that date, between the
566 Continental Trading Company, Ltd. and the corporations known as Humphreys Mexia Company and Humphreys Texas Company; were you present during these negotiations on or about November 17, 1921, which resulted in the contract or contracts between the Continental Trading Company, Ltd. and the corporations known as Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company.

Note: The return of the letters rogatory shows that plaintiff inquired whether the court had power to compel answers and the court replied that it had no such power, but that all its rights were reserved to the plaintiff.

Deposition on letters rogatory of James E. O'Neil taken on the same letters rogatory at Paris, France, February 21, 1925.

The witness on said letters rogatory, after having been duly sworn, answered questions propounded to him as follows:

My name is James O'Neil, my nationality American, my address in the United States, Garden City, New York, my temporary address in France, Cannes, Villa St. Antonio. I do not know when I expect to return to the United States. I have no profession in the United States but formerly I was in business. To the question whether the witness had an official position in the Prairie Oil & Gas Company he replied that he had decided not to testify to any fact in connection with this proceeding, that he had no interest in the affairs which are involved, nor had he done any act which was illegal or contrary to morals relative to this affair; that his health is not good; that he was present contrary to the instructions of his physicians; that he had retired
567 from business, and that because of these circumstances he preferred to remain outside the proceeding in suit, and he respectfully asked the judge to excuse him, and refused to reply to the question which had just been put to him or to any others which might be put.

Plaintiff's counsel then protested because the witness refused to answer and declared that plaintiff reserved all its rights. The same questions were then put to this witness as are stated above in the deposition of the witness Blackmer to which the witness made the same response, namely, that he would not answer the same, as had been made by Blackmer.

The same interrogation was made of the judge as to his power to compel this witness to answer, and he made the same response as is above set forth in the case of the witness Blackmer.

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568 Deposition of J. E. BENTON, offered on behalf of the plaintiff.

Direct Examination.

I reside at El Paso, Texas; am Vice-President and Cashier of the First National Bank. I have been an officer of the bank ten or twelve years. I know Albert B. Fall, formerly Secretary of the Interior of the United States. He had a depositor's checking account in our bank, which is still open. I produce that account. The account shows at what periods statements were rendered to the depositor. It was the practice of the bank to render a periodical statement to the depositor. The record shows that Mr. Fall was rendered statements as a depositor from time to time. The record shows Mr. Fall's deposit balance on June 11, 1923, as

$25,240.05. The last preceding balance prior to June 11th was $240.05 on June 9th. I produce a deposit ticket showing a deposit of $25,000 on June 11, 1923.

I have also the original deposit ticket of June 18, 1923, covering the sum of $671.36.

These two deposit tickets have to do with the same transaction. The deposit of June 11th consisted of Liberty Bonds, $25,000, First 3½% and the deposit of June 18, 1923, was interest and premium on those Liberty Bonds.

Our bank received a letter now shown to me bearing no date. I cannot state the date of its receipt. The letter reads as follows:

Washington, D. C.

Hon. James C. McNary,
Attention Mr. Murchison in absence Mr. McNary.

Dear Sir:

I am having forwarded from N. Y. Monday $25,000—in U. S. Bonds—to you—kindly sell same for my a/c—& please credit my drawing a/c. Mr. C. C. Chase will need some cash—to use for me & without further instruction he is authorized to draw up to $2500—same to be charged to me—:

I am sailing tomorrow for London & Possibly other portions of Europe—on business. Please notify Mr. Chase.

Sincerely yours,

ALBERT B. FALL.

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569 Mr. McNary is President of the bank and Mr. Murchison is Vice-President of the bank. I identify a letter dated New York City, June 5, 1923, purporting to be signed by J. W. Zevely. That letter was received by our bank. The letter offered reads as follows:

Hon James G. McNary, New York City, New York
First National Bank, June Fifth, 1923.
El Paso, Texas.

(Or attention of Mr. Murchison)

Dear Sir:—

We are sending to you today by express, a package which is the property of Mr. Albert B. Fall, which you will please

receive for his account. Kindly acknowledge receipt and oblige,

Yours very truly,

(Signed) J. W. ZEVELY.

The authenticity of Mr. Zevely's signature was admitted. Mr. McNary signed and sent the original reply to the last letter, and a copy of the reply is as follows:

June 12th, 1923.

J. W. Zevely, Esq.,
45 Nassau Street,
New York City.

Dear Sir:

I wish to acknowledge receipt of your letter of June 5th, advising that you were sending, by express, a package belonging to Mr. A. B. Fall, which we should receive for his account.

I beg to advise you that the package referred to has been duly received.

Your very truly,

(Signed) JAS. G. McNARY

I cannot state of my own knowledge that these letters referred to the $25,000 item shown on the deposit ticket of June 11, 1923. There is no other item of $25,000 in Mr. 570 Fall's account, and no other transaction totaling $25,000 of 3½% Liberty Bonds in Mr. Falls' account. The next deposit in Mr. Fall's account after the transaction of June, 1923, is $8,810.65 on February 28, 1924. This is an item drawn on a New York Insurance company. The withdrawals from Fall's account are:

June 12, 1923	$2.48
June 30, 1923	1,775.65
Sept. 4, 1923	100.00
Sept. 5, 1923	6.00
	3.50

Deposition of GUSTAF D. WAHLBERG, offered on behalf of plaintiff.

Direct Examination.

I reside in New York City and am employed by a Cuban concern. I was employed as private secretary by Harry F. Sinclair from November 1916, until January 21, 1924. I was an officer of Mammoth Oil Company from its incorporation until the end of 1922, as I recollect. I know Mr. J. W. Zevely. He was counsel for Mr. Sinclair in 1923. Mr. Sinclair left for Europe on the 26th of May, 1923. I remember a conversation which took place before he left at which Mr. Sinclair, Mr. Zevely and I were present. It took place on 40th Street, New York City, on the day Mr. Sinclair sailed, May 26th. Mr. Sinclair said to me in Zevely's presence, "Wahlberg, Mr. Zevely may want $25,000 while I am gone. If he does, you give him Liberty Bonds for that amount." I think within a week or ten days after Mr. Sinclair sailed Mr. Zevely requested the bonds. I turned over to him $25,000 face value 3½% Liberty Bonds. I made no record of the numbers. I didn't at the time know what he did with them. I put a memorandum in Mr. Sinclair's box stating the date the bonds were taken out, Col. Zevely's name, and the amount of the bonds. That ended my connection with the transaction.

Deposition of G. T. STANFORD, offered on behalf of plaintiff.

Direct Examination.

I am, and have been for some years, counsel for the Sinclair Consolidated Oil Corporation, and since its incorporation, for the Mammoth Oil Company. The date of incorporation of the Mammoth Oil Company was February 28,
571 1922. I have the minutes of the Sinclair Consolidated Oil Corporation before me. I read from the minutes of the meeting of the Board of Directors of September 13, 1922, as follows:

"Mr. H. F. Sinclair presented to the meeting an offer to exchange 950,000 Class A and 2,500 Class B shares of Mammoth Oil Company for 3,000,000 shares of no par value common stock of this corporation. The offer having been discussed at length, it was on motion duly made and seconded, Mr. H. F. Sinclair not voting, resolved that the offer submitted by Mr. Sinclair regarding the exchange of 950,000 Class A and 2,500 Class B shares of Mammoth Oil Company for 3,000,000 shares of the No Par Common Stock of this cor-

poration be and the same is hereby referred for further consideration to a committee consisting of Messrs. Walker, Whitney, Wilson, Fuller, Phillips, Tinker, and Corey, with instructions to report its findings at an adjourned meeting of this board, to be held in the New York office of the corporation on Monday, September 18, 1922, at 11:30 o'clock in the forenoon."

I read from the minutes of the adjourned regular meeting of the Board, held on September 29th, as follows:

"In the absence of Mr. Sinclair, Mr. A. E. Watts, vice-president of the corporation, presided as chairman. The presiding officer read a letter from Mr. H. F. Sinclair, dated September 28, 1922, which the secretary initialed for the purpose of identification and of which the following is a copy:

"New York, September 25th, 1922.

To the Board of Directors
Sinclair Consolidated Oil Corporation.

Dear Sirs:

I desire to offer the following substitute for the offers heretofore submitted in reference to exchange by me of certain shares of Mammoth Oil Company for certain shares of Sinclair Consolidated Oil Corporation, as follows:

On the acceptance of this offer to deliver to you 500,580 A shares out of the total authorized and issued 2,000,000 A shares and 1,500 B shares out of the total authorized and issued 5,000 B shares of the capital stock of the Mam-
572 moth Oil Company without nominal or par value in exchange for 250,000 shares of the fully paid and non-assessable Common Stock of your Corporation.

You shall have the option, to be exercised by you on or before January 1, 1923, to deliver to me 25,000 additional shares of the Common Stock without nominal or par value of your Corporation and thereupon I shall be obligated to deliver to you 500,000 additional A shares and 1500 additional B shares of the capital stock of the Mammoth Oil Company without nominal or par value. If you exercise the option specified in this paragraph you shall, in addition to delivering to me 250,000 shares of the Common Stock of your corporation, pay to me an amount equal to the dividend that would be payable on 250,000 shares of stock of your Corporation if the same were issued as of this date. Likewise you shall be entitled to any dividend payable in the interim on the stock of the Mammoth Oil Company.

The Mammoth Oil Company is a corporation duly organized and existing under the laws of the State of Delaware and has acquired from the United States of America and now owns an oil and gas lease covering certain lands in Natrona County, Wyoming, known as "Naval Petroleum Reserve No. 3, Wyoming." The authorized capital stock of the Mammoth Oil Company consists of 2,000,000 shares of A. stock and 5,000 B shares without nominal or par value. The voting rights for the election of Directors is vested exclusively in the B shares.

The offer is subject to your acceptance on or before September 29th.

Exchange of certificates pursuant to the terms of this offer is to be made at the office of your Treasurer at No. 45 Nassau Street, in the Borough of Manhattan, City of New York on ten days notice from either party.

If this offer is accepted by you there will be, within ten days after exchange of certificates, in the Treasury of the Mammoth Oil Company, $3,000,000. This payment into the Treasury of the Mammoth Oil Company will not create any additional liability on behalf of the Mammoth Oil Company.

I attach herewith a list of note obligations of Mammoth Oil Co., as the same exist on this date. I also attach a statement of expenditures made by the Mammoth Oil Company up to September 30, 1922 and of the estimated expen-
573 ditures for October, November and December, 1922, and in my opinion the $3,000,000 above referred to will be sufficient to pay all the note obligations above listed and the current obligations and developing expenses as estimated up to January 1, 1925.

If this offer is acceptable, kindly notify me of your acceptance.

Very truly yours,

H. F. SINCLAIR."

"Thereupon, Mr. Elisha Walker read the report of the special Committee of which the following is a copy:

"Report of the Special Committee of the Board of Directors of the Sinclair Consolidated Oil Corporation Appointed to Consider and Report upon Mr. H. F. Sinclair's Offer to Sell the Corporation an Interest in the Stock of The Mammoth Oil Company.

Mr. H. F. Sinclair's offer to sell this corporation an interest in the stock of Mammoth Oil Company was first formally

brought to the attention of the Board of Directors by Mr. Sinclair's letter of September 13, 1922. This Committee was appointed by resolution of the Board at a meeting held the same date. Some time prior to the receipt of Mr. Sinclair's offer, most of the members of the Board had been informed in one way or another of the formation of the Mammoth Oil Company by Mr. Sinclair and of its contract with the Government. Early in August Mr. Sinclair suggested to members of the Finance Committee the advisability of the corporation acquiring an interest in the stock of the Mammoth Oil Company. Messrs. Tinker and Walker, as members of the Finance Committee and after conference with other members, employed Mr. W. A. Kunkel, a well known expert, to make an independent examination and report. Mr. Kunkel assured the Committee that he was entirely independent and had no interest in the Mammoth Oil Company. Mr. Kunkel visited the property in company with Dr. Veatch, the Corporation's Geologist, who had already gained some familiarity with the property as an advisor to Mr. Sinclair. After this visit to the property, Mr. Kunkel made a report dated September 8, 1922. His report is also based in part upon previous extensive examinations of the property by
574 Government experts. The report has been laid before the Board and has already been examined by several members. It is herewith re-submitted in connection with this Committee's report.

"Mr. Kunkel appeared before the Committee and was examined at some length. He feels that he has sufficient knowledge of the property, as a result of his visit after his employment by the Corporation and his previous studies in the same district, to be very certain of the conclusions embodied in his report. Indeed, his oral report was even more favorable than his written report.

"Among Mr. Kunkel's conclusions are the following: He believes the rights and properties now vested in the Mammoth Oil Company to be of very highest value and of the greatest importance in any consideration of the general oil situation in the United States. He states positively that Teapot Dome is an extension of the Salt Creek Field; that the royalty and other provisions of the Government lease to the Mammoth Oil Company will make it highly profitable to the operator; that the wells can be expected to yield oil 50 years hence notwithstanding that they will be considerably larger than the Western Pennsylvania wells. He places a cash value of at least $50,000,000 on these properties in their

condition today and states positively that such an amount could today be obtained for these properties from other oil interests. He adds that if, as he expects, the bringing in of test wells demonstrates the soundness of his present conclusions, the salability value of the property will be substantially increased. According to Mr. Kunkel an investment of $50,000,00 would all be repaid with interest in less than 10 years taking no account of casing head gasoline profits, which may amount to [$5,000,00] a year additional. He estimates the minimum amount of oil underlying Teapot Dome and recoverable at 150,000,000 barrels. All of these estimates of returns presuppose the actual finding of oil. No well has as yet actually been brought in. Mr. Kunkel has been familiar with Teapot Dome for several years and his previous convictions as to the presence of oil have, during the past six months been confirmed by the bringing in of wells
575 drilled just off the narrow edge of the Dome toward the Salt Creek field. He regards the existence of oil as established to the satisfaction of an oil expert and his certainty of the existence of oil is such that he would act on it as demonstrated if the decision rested entirely with him. This was brought out clearly in long conversations that members of the Committee have had with Mr. Kunkel. As Mr. Kunkel's report is before the board, a further summary of his conclusions is unnecessary.

"Pursuant to its obligations to the Government, the Mammoth Oil Company is now engaged in drilling 23 wells, all of which should be completed by the end of the year. The first storage tank has just been completed and the contractors promise two tanks each week from now on.

"A detailed budget submitted to the Committee shows a total of $1,750,000 to be required from October 1st to the end of the year for completing the 23 wells now drilling, erecting the necessary storage capacity therefor, providing roads and camp facilities and for the Company's other requirments to the end of the year. The outstanding indebtedness of the Company (not including current operating liabilities) aggregate some $1,500,000. Mr. H. F. Sinclair, in consideration of retaining the remaining shares of the Mammoth Oil Company, has agreed to provide the Treasury of the Mammoth Oil Company with $3,000,000 which is available for the purposes aforesaid.

"Recognizing the embarrassment resulting from the fact that the Corporation is dealing with the Chairman of its Board, and the fact that Mr. Stanford, its General Counsel,

has been advising Mr. Sinclair individually in connection with the Teapot Dome transaction, your Committee thought it advisable to call in independent counsel. We therefore retained Messrs. Cravath, Henderson, Leggiswell and de Gersdorff to act as special counsel in this particular matter. Mr. Cravath of that firm has made an examination of the facts and his firm has rendered an opinion which is submitted herewith.

"The Committee has had several interviews with Mr. Sinclair with a view to securing the most favorable possible offer and they have succeeded in obtaining one much more favorable than the first which was contained in Mr.
576 Sinclair's letter of September 13th, 1922. They are satisfied that the offer embodied in Mr. Sinclair's letter of September 28th, 1922, submitted herewith, is the best obtainable, Mr. Sinclair having informed the Committee that he had received offers from other interests for the purchase of a large interest (but less than control) in the stock of the Mammoth Oil Company at a considerably higher price per share than that embodied in his offer to the Corporation. The revised offer is much more advantageous to the Company than the original one, inasmuch as the present investment is reduced by one-half and the Corporation can defer its decision respecting the remaining investment until January 1st next, which Mr. Kunkel assures us is ample time for a satisfactory demonstration of the value of the property.

"As the Board is aware, the Corporation has already taken over that portion of the contract between the Mammoth Oil Company and the Government which provides for the erection of storage facilities and the delivery of oil at certain designated seaports in exchange for oil certificates. That transaction was entered into because the officers of the corporation deemed it clearly advantageous, without regard to the possible acquisition by the Corporation of an interest in the stock of the Mammoth Oil Company. The Committee does not regard the obligation of the Mammoth Oil Company to build a pipe line from the Teapot Dome district to a connection with the existing pipe line near Kansas City, as imposing a serious burden, because, if the Teapot Dome district should develop in accordance with expectations, it will be clearly to the advantage of the Sinclair Pipe Line Company to extend its lines to such productive districts as the Teapot Dome and the adjoining Salt Creek Field (which as now developed has a daily productive capacity of about 110,000 barrels, of which only about 48,000 barrels can be handled

through the pipe line connecting the district with the Standard Oil Company's refinery at Casper, about 80 miles away. Under the contract with the Government the obligation to build a pipe will not arise unless the test wells demonstrate a productive capacity of at least 20,000 barrels a day. The Committee understands that the minimum cost of the pipe will be about $1,000,000 and that it will probably be wise to build a pipe line of such capacity as considerably to increase this cost.

"The Committee is assured and believes that both the steps above outlined would be in the interest of the Sinclair Corporations had the stock of the Mammoth Oil Company been owned by a person having no connection with the Sinclair Corporations, instead of by Mr. H. F. Sinclair. That being so, the fact that the Mammoth Oil Company is controlled by Mr. Sinclair only increases the advantage of such connections considered by themselves.

"The Committee has experienced no little difficulty and hesitation in reaching a conclusion with regard to the acceptance of Mr. Sinclair's revised offer. It recognizes that however great may be the confidence of the Board in Mr. Sinclair, the fact that he is dealing with the Corporation as outside disqualifies him from acting in his usual capacity as the Corporation's principal adviser. This disqualification extends, in some measure, to certain other officers of the Corporation who, acting individually and not officially, have been advising Mr. Sinclair in connection with his contract with the Government relating to the Teapot Dome district.

"The Board is, therefore, compelled to an unusual degree to act upon its own independent judgment and upon such independent advice as the Committee has been able to secure. The Committee feels that it could secure no more independent and reliable advice regarding the value and prospects of the oil supplies in the Teapot Dome District than that contained in Mr. Kunkel's report. It has learned nothing to cause it to doubt the soundness of his conclusions. The Committee would much prefer delaying the Company's decision until the Teapot Dome District could be more fully explored, but it feels bound to take Mr. Sinclair at his word when he says that he is unwilling to hold his offer open beyond the period and within the limits specified in his revised offer. It is proper to add that in this connection, Mr. Kunkel's advice is that the information now available is of

ficient to justify the conclusions he has reached and to justify the Corporation in acting upon these conclusions.

"Counsel have expressed the opinion that upon the facts submitted to them Mr. Sinclair is not a trustee for the Corporation in respect of the stock of the Mammoth Oil
578 Company which he has acquired and that Mr. Sinclair is free to deal with that stock as he sees fit. Therefore the only way by which the Corporation can obtain an interest in the Mammoth Oil Company is by dealing with Mr. Sinclair. The Committee feels that in spite of the embarrassment resulting from Mr. Sinclair's relation to the Corporation, the question of acquiring an interest in the Mammoth Oil Company must be dealt with on its merits, just as though the Corporation were dealing with a person having no connection with the Corporation.

"It seems to your Committee that without regard to the special value of your Corporation of the control of the Mammoth Oil Company mentioned below, an investment in the stock of the Mammoth Oil Company on the basis proposed in Mr. Sinclair's offer is likely to yield large profits. Based on the present market value of the stock of the Sinclair Corporation, the proposed acquisition would attribute a value of about $[illegible] to the property of the Mammoth Oil Company. Mr. Kunkel's report would indicate a value greatly in excess of that figure.

"Quite apart from the intrinsic value of the investment, the proposed transaction, particularly if the option to purchase the majority of the stock is exercised, offers special advantage to the Sinclair Corporation. All the important refineries of the Sinclair Corporation are located upon the pipe lines extending from Houston, Texas, to Chicago, Illinois. While the supply of oil tributary to these pipe lines seems adequate for the needs of the present and immediate future, it will greatly strengthen the position of the Corporation, especially for future growth, if it can control for its refineries and important part of the supply from the Salt Creek and Teapot Dome districts. Provision for connecting those districts with the existing pipe lines has already been considered but the mere construction of a pipe line would not give the Sinclair Corporation control of any important production in those districts. If the option to acquire a majority of the stock of the Mammoth Oil Company is exercised, the Sinclair Corporation will secure control of what promises to be a very large production. It is true that the price the

Corporation is asked to pay for this control is very
559 large, but as already stated, there is good reason to believe that this investment will be productive through the dividends that should be paid upon the stock acquired.

"The Committee recognizes that, in view of the circumstances, there may be serious criticism on the part of stockholders if the purchase resulting from the acceptance of Mr. Sinclair's offer should prove unprofitable. The Committee feels however, that it should not permit the fear of possible criticism to deter it from recommending a transaction which, on the strength of all the information obtainable, seems not only likely to be profitable, but to be of special advantage to the Corporation—an opportunity which Mr. Sinclair states will be lost unless availed of promptly.

"The Committee therefor recommends the acceptance of Mr. Sinclair's offer dated September 28, 1922.

"ELISHA WALKER
"R. THORNTON WILSON
"WM. P. PHILIPS
"SAMUEL L. FULLER
"H. P. WHITNEY
"D. R. TINKER"

Thereupon, Mr. Walker presented the opinion of Messrs. Cravath, Henderson, Leffingwell and deGersdorff. The following is a copy of that opinion:

"Cravath, Henderson, Leffingwell & De Gersdorff
"52 William Street

"New York, September 29, 1922.

Dear Sirs:

"You have asked our opinion upon the following statement of facts:

"The Sinclair Consolidated Oil Corporation is one of the important oil companies of the country. It controls valuable and extensive oil properties in the States of Kansas, Oklahoma, Texas and Louisiana and a few oil properties in the State of Wyoming. It also controls oil properties in Mexico and extensive concessions for the exploitation of oil in Costa Rica, Panama and Angola West Africa.

"The Sinclair Consolidated Oil Corporation and the Standard Oil Company of Indiana each own in equal proportions

the entire capital stock of the Sinclair Pipe Line Com-
580 pany which owns and operates a pipe line system extending from the Mexia Oil Field in Texas to East Chicago, Indiana.

"Mr. H. F. Sinclair is Chairman of the Board of Directors of Sinclair Consolidated Oil Corporation and is probably the largest stockholder. He has built up the Corporation's organization and chosen most of its officers and principal employees. His brother, Mr. E. W. Sinclair is President of the Corporation.

"In the month of January, 1922, Mr. H. F. Sinclair acting solely in his own interest began negotiations with the Secretary of the Interior, (acting also for the Secretary of the Navy) for an oil and gas lease on certain Government lands in Natrona County, Wyoming, known as Petroleum Reserve No. 3, which reserve is commonly referred to as the 'Teapot Dome.'

"The lands embraced in Naval Petroleum Reserve No. 3 has been duly withdrawn by Executive order of the President of the United States and duly set aside as a Naval Petroleum Reserve. This Petroleum Reserve adjoins the so-called Salt Creek Wyoming oil fields which are now being extensively operated principally by or through the Mid-west Refining Company which is controlled by the Standard Oil Company of Indiana. The oil from the Salt Creek field is piped about 40 miles to Casper, Wyoming, where the Mid-west Refining Company has a large refinery. The products of this refinery are distributed by rail from Casper.

"The Sinclair Corporation has few producing properties in Wyoming. Its principal producing properties are approximately one thousand miles distant from the Wyoming fields being located in the oil fields of Texas, Oklahoma and Kansas.

"Mr. Sinclair negotiated with the Secretary of the Interior (also acting for the Secretary of the Navy) solely in his own interest. He was one of several competitors for the Teapot Dome lease. He never represented that he was acting for the Sinclair Consolidated Oil Corporation and he never offered the facilities of that Corporation and made it plain he was acting entirely for his own account. Mr. Sinclair's negotiations finally resulted in the execution of a contract be-
tween the Mammoth Oil Company and the Government
581 of the United States dated April 7th, 1922, of which a copy is annexed.

"The Mammoth Oil Company is a Delaware Corporation and was organized by Mr. Sinclair. It has an authorized capital stock of 2,005,000 shares, of which 2,000,000 are Class A shares and 5,000 are Class B shares. The voting rights for the election of directors are vested exclusively in the B shares.

"The contract in question is one which Mr. Sinclair, with his financial ability and experience in the oil business, could carry out without the aid of the Sinclair Corporation.

"The arrangement for the delivery of fuel oil to the United States Navy which is provided for in Article II of the contract is not one which the Sinclair Corporation has peculiar qualifications for carrying out. This part of the contract could be performed by any one of several large oil companies. By virtue of a contract entered into between the Mammoth Oil Company and the Sinclair Refining Company, a subsidiary of Sinclair Consolidated Oil Corporation, that part of the Mammoth agreement with the Government set forth in Article II has been taken over by the Sinclair Refining Company. Mr. Sinclair offered that part of the contract to the Sinclair Refining Company and that company accepted it because they both deemed it a profitable contract.

"The Mammoth Oil Company could develop Naval Petroleum Reserve No. 3 and comply with the other terms of its contract with the Government without the cooperation of the Sinclair Corporation and without in any way interfering with its business and operations except as any new oil company might affect the business of all other companies distributing oil within the same territory.

"The Mammoth Oil Company is not dependent upon the Sinclair Pipe Line Company for the construction of the pipe line to the Salt Creek and Teapot Dome Wyoming Districts. In the opinion of Mr. Sinclair it would be to the interest of the Prairie Pipe Line Company or some other company or interest to build a pipe line to the Salt Creek and Teapot Dome Wyoming Districts provided it had sufficient assurance of an opportunity to transport large quantities of oil from
582 these districts.

"Any person with sufficient means or credit could build a pipe line to transport oil from the Salt Creek and Teapot Dome Districts to the junction with the pipe lines of

either the Prairie Pipe Line Company or the Sinclair Pipe Line Company and require either or both of those companies, as connecting carriers, to receive and transport the oil delivered to their pipe lines from the said Salt Creek and Teapot Dome Districts. While it is true that interstate pipe lines are common carriers, yet from a practical business standpoint it is generally considered good business policy that interests owning or controlling large supplies of oil should be identified with the interests owning or controlling the pipe lines.

"There is nothing in the character or quality of the oil from the Salt Creek and Teapot Dome districts which would prevent its transportation through the pipe lines of the Prairie Pipe Line Company, the Sinclair Pipe Line Company or any other Pipe Line Company.

"If a pipe line were constructed from the Salt Creek and Teapot Dome districts to a junction with the pipe lines of the Sinclair Pipe Line Company and the Prairie Pipe Line Company and the oil from the Salt Creek and Teapot Dome Districts could be transported to the refineries of not only the Sinclair Refining Company but those of the Standard Oil Company (Indiana) and by means of pipe lines connecting with the pipe lines of the Sinclair Pipe Line Company and Prairie Pipe Line Company, to various refineries located in the east and on the Atlantic Coast.

"It therefore follows that if the Teapot Dome field becomes as productive as is anticipated the Mammoth Company's obligation to build the pipe line required by the contract with the Government will not be burdensome.

"Today the Sinclair Corporation is competing for business with most of the large oil companies organized in the United States, among which are the following:

"Standard Oil Company (Indiana)

"Standard Oil Company (Kansas)

"Standard Oil Company (New York)

5803 "Standard Oil Company (New Jersey)

"Standard Oil Company (Louisiana)

"The Texas Company

"Gulf Corporation

"Prairie Oil & Gas Company

"Cosden Company

"Tidewater Oil Company

"Standard Oil Company (Ohio)

"Accordingly if the Mammoth Oil Company were owned and developed independently of the Sinclair Corporation it would simply be one additional competitor whose competition would be felt by the Sinclair Corporation no more than by its other competitors serving the same territory.

"Mr. Sinclair offers to exchange 1,001,000 A shares and 3,000 B shares of the Mammoth Oil Company for 500,000 shares of the Common Stock of the Sinclair Consolidated Oil Corporation upon the terms of a letter dated September 28, 1922, of which a copy is annexed.

"On the basis of present market values these shares of Common Stock of the Sinclair Corporation would have a value of about $18,000,000. On the basis of that value the entire value of the Mammoth Oil Company's property would be about $33,000,000.

"When the opportunity of acquiring an interest in the Mammoth Oil Company was first brought to the attention of the Sinclair Corporation, Messrs. Elisha Walker and E. R. Tinker, as members of the Finance Committee employed Mr. W. A. Kunkel to make a report upon the properties owned by the Mammoth Oil Company. Mr. Kunkel is one of the best known experts of oil in the United States. He is entirely independent and has no connection with, or interest in, the Mammoth Company. In conjunction with Dr. A. C. Veatch, the Chief Geologist of the Sinclair Corporation, Mr. Kunkel made an examination of the lands embraced in the Mammoth contract. In the judgment of Mr. Kunkel the property has a minimum potential production of 150,000,000 barrels of oil.

"Upon the foregoing statement of facts you ask our opinion upon the following questions:

"1. Whether the Sinclair Corporation has any claim
584 against Mr. Sinclair arising out of the acquisition of the 'Teapot Dome' Lease by the Mammoth Oil Company and his ownership of the stock of that Company, or is entitled to any interest in that lease or in the stock of the Mammoth Oil Company.

"2. In case the first question is answered in the negative, whether the Sinclair Corporation may lawfully acquire the

To Messrs. Elisha Walker, H. D. Whitney, R. T. Wilson, S. L. Fuller, W. P. Phillips and E. R. Tinker, acting as special Committee of the Board of Directors of The Sinclair Consolidated Oil Corporation."

"Upon motion duly made and seconded, the report of the Committee and opinion of special counsel were accepted and ordered on file.

"The following resolutions were thereupon offered:

"Resolved, that the offer of Mr. H. F. Sinclair dated September 28th, 1923 as read to the meeting and identified by the initials of the Secretary be and the same hereby is accepted in the terms thereof; and

"Further Resolved that the proper officers of the Corporation be and they hereby are authorized and directed to execute and deliver to or upon the order of Mr. H. F. Sinclair 250,000 shares of the common stock of Sinclair Consolidated Oil Corporation in exchange for 500,500 Class A shares and 1,500 Class B shares of the capital stock of the Mammoth Oil Company and to take any and all further action which may be necessary and proper to effect such exchange; and

Further Resolved that exercise of the option, obtained by the Corporation through the acceptance of Mr. Sinclair's offer, to exchange 250,000 additional shares of the common stock of this Corporation for 500,500 additional Class A shares and 1,500 Class B shares of the Capital stock of the Mammoth Oil Company be deferred until further action by the Board and that the officers are directed to keep themselves, in the meantime, fully informed regarding the progress of the drilling operations upon Naval Petroleum Reserve No. 3, Wyoming, in order that they may be in a position to fully advise the Board before said option expires.

"On motion duly made and seconded, the resolutions
587 were adopted."

At the time the action above detailed was taken the total authorized and outstanding capital stock of Mammoth Oil Company was 2,000,000 Class A shares, and 5,000 Class B shares, both classes without nominal or par value. The amount of Class A stock transferred to the Sinclair Consolidated Oil Corporation under this transaction therefore was one-fourth of the outstanding Class A stock. And the amount of Class B stock that the Mammoth Oil Company

transferred to the Sinclair Consolidated Oil Corporation was three-tenths. The approximate market value of the stock of Sinclair Consolidated Oil Corporation issued in exchange at the date of the exchange was $34 a share.

Stipulation.

It is stipulated in place of testimony, as follows:

"1. That Harry F. Sinclair (mentioned in the bill of complaint) caused to be organized on February 28th, 1922, the defendant Mammoth Oil Company.

"2. That all of the authorized capital stock of said Mammoth Oil Company, to wit, 2,000,000 shares of Class A stock without nominal or par value, and 5,000 shares of Class B stock without nominal or par value (save 10 shares of Class A stock) was issued to said Harry F. Sinclair in consideration of his causing said Company to secure the lease which is Exhibit B of the Bill of Complaint herein.

"3. That said Harry F. Sinclair donated to said Mammoth Oil Company 191,200 shares of Class A stock of those received by him as above set forth, which shares were sold by Mammoth Oil Company for cash. Of the remaining shares of Class A stock said Harry F. Sinclair, together with interests controlled by him, has since the organization of the Company and still does own or control a majority.

"4. Since the organization of said company said Harry F. Sinclair has owned or controlled a majority of the Class B stock.

"5. The holders of Class A stock are not entitled to vote for the election of Directors, and the sole voting right
588 for directors is vested in the holders of the Class B stock.

"6. The Sinclair Consolidated Oil Corporation now owns 800,800 shares of said Class A stock and 1500 shares of said Class B stock.

"7. This admission is made subject to objection at the trial, to the competency, relevancy and materiality of the facts or any of them herein stipulated."

Stipulation.

It was stipulated that Miss Gibben would, if present, testify that the memorandum of the numbers of the bonds being part of Pl. Ex. 143, which bonds were delivered to Walker Brothers April 13, 1922, as per the bill of sale to Walker Brothers was in her handwriting.

Defendant's Testimony.

Deposition of J. W. ZEVELY, offered on behalf of defendants.

(This is a portion of the testimony of J. W. Zevely before the Senate Committee on Public Lands and Surveys, and the Senator interrogating the witness was Senator Walsh of Montana, who was called the prosecutor of that investigation conducted by that Committee.)

I know that when Mr. Sinclair got Secretary Fall to go to Russia with him, on account of some international questions as he thought involved some controversies or some applications for leases, etc., that were in Russia, he wanted the advice and counsel of Secretary Fall. I got in communication with Secretary Fall and asked him to go over with Mr. Sinclair, and he finally stated that he could probably go but he could not go as early as Mr. Sinclair wanted to go, and that he would follow him, but that he would need some
589 money, that he had some things to do down at home before he could go, one or two small ranches that he wanted to buy there. And before he would go, however, he said he had to go to Washington to see the authorities there to see whether it met with the approval of the administration that he should go on this matter, having been connected with the administration. So he wanted $25,000, and before Mr. Sinclair sailed I told him that the secretary might want that money, and he said, "If he does, you will have to let him have it." He called Mr. Wahlberg and told him if I asked him for it to give me $25,000 or $30,000 in bonds. When the secretary asked for that and Mr. Wahlberg gave me the bonds—well, I never touched the bonds, but he sent them down to El Paso to the bank that Secretary Fall directed that they should be sent to. That was in June, 1923. Secretary Fall was in New York when I had these negotiations with him when the talk about these bonds took place.

When I made the arrangement with him under which he was to go to Russia he was in Three Rivers. I went down

there to see him either from Washington or New York at the request of Mr. Sinclair to get Mr. Fall to go. I suppose the arrangement was not made by mail and correspondence because I didn't want to write about it. I am not sure of that however. I didn't take the money with me. The $25,000 in bonds were afterwards sent out there. I don't remember what they were selling for at that time and Secretary Fall never told me what he got out of them. They were Liberty Bonds I suppose, but I don't know. No portion was ever turned back to my knowledge. They were never turned back to me and they would have been turned back to me, if at all. Secretary Fall got $10,000 for expenses. That was in addition to this. This was not a payment to him. This was a loan to him this $25,000. As evidence of the loan I have his note at my office. I can bring it to you if you want it. I got the note when Fall came back from Russia. I do not know how long that was after the time when he got the bonds, but six or seven weeks, maybe two months. I do not know why Secretary Fall did not put the note in the mail and send it to me immediately upon his getting the bonds. I do not know but what that might have been the ordinary thing to do; but he didn't do it.

[580] When I went out to Three Rivers I didn't make any arrangements with Secretary Fall as to the compensation he was to receive. I didn't discuss it with him. I didn't talk with him about compensation at all. I would suppose he would expect compensation for it, though it was not discussed. Usually when you employ a lawyer, as you know, you expect to pay him and I expect Secretary Fall would be paid a reasonable compensation for his services.

He didn't give the note to Mr. Sinclair. He gave the note to me. I let him have the bonds, or they were sent to him, or to the bank at El Paso rather. I didn't even know whether he was going to charge a fee or not. I loaned him the money in my name and took a note, which I have. It was not a fee; it was a loan. It was Mr. Sinclair's loan. I took the note in my own name and I hold that note now. I told Mr. Sinclair when he came home that I had it and I still have it and it belongs to me. I gave Mr. Sinclair no evidence of the receipt of these bonds. He has not any from me. He has not got a note from me. I think that the amount of the note is $25,000. I don't know whether the bonds at that time were selling at their face or not. They may have been slightly under par. But Secretary Fall gave me a note for $25,000. I do not know to what bank I sent the bonds. I gave the address

which Senator Fall gave me to have them sent to a bank in El Paso. I turned that address over to Mr. Wahlberg. I can't say now what bank it was. I didn't see the bonds; didn't send them at all. Mr. Wahlberg didn't know that they were for Senator Fall. I didn't tell him who they were for. I directed him to send them to a bank in El Paso and I wrote the bank a letter stating I had sent them for Secretary Fall's account. I gave no directions to the bank. The letter was written from New York or from Washington. I don't know whether the bonds have been converted by Secretary Fall. What he said when he gave me the note was, I think, "Here's the note for that money I got from you, or the bonds I got from you." I think that is what he said, but I have no recollection about it nor where I was when he said it. It
501 may have been in my office. I think it was in my office, but I don't know.

Deposition of John K. Robison, offered on behalf of defendants.

Direct Examination.

I am a Rear Admiral in the United States Navy. At present I am Chief of the Bureau of Navy Engineering, Engineer in Chief of the Navy. I have been such Chief since October 1, 1921; graduated at the Naval Academy 1891. Since graduation I have had all the various sorts of service that come to a naval officer afloat and ashore.

The Bureau of Engineering is in charge of the machinery of ships, speaking broadly, design, preparation of instructions for operation, repair, supply of means of maintenance, alterations and improvements, entire charge in short. Prior to becoming Chief of the Bureau of Engineering I was Assistant in the office of the Chief of Naval Operations, charged with affairs connected with shore stations, and in particular with the development of plans for shore stations. I was Secretary to the Board for the development of naval yard plans, which Board had for its function the development of plans for furnishing necessary facilities to accommodate the basic plans for the national defense. I had been engaged in that particular line of work from May, 1920.

After becoming Chief of the Bureau of Engineering I first assumed duties in connection with the naval petroleum reserves on October 8, 1921, by an oral order of the Secretary

of the Navy. The Secretary sent for me and complained that a certain letter had been placed upon his desk for signature without his attention having been drawn to it. This letter was not in accordance, he said, with his previously announced policy, and he wanted to know why I had allowed such a letter to come to him. I explained that I did not know anything about the letter; that it was prepared by his own direct subordinate directly in charge, under him, of matters pertaining to the naval petroleum reserves. He remarked that this seemed to be the act of an authorized bureau, that he did not want it to continue and he directed me to take personal charge of all naval petroleum reserve
592 matters thereafter and to give to such matters my personal attention.

I invited his attention to the fact that the placing of the naval petroleum reserves directly under the office of the Secretary had been accomplished by a formal order and should not be changed save with a formal written order; further that the matter was one that appeared to me to effect other than the Bureau of Engineering and that it should be considered in council before the formal order was issued. He said he would do that. That was followed first by consideration in council and, second, by the issuance of a formal order. This was on about the 18th day of October, as I recall it. I identify the formal order issued by the Secretary.

(Said order is Pl. Ex. 15. Attached to it as Reference A is Pl. Ex. 14.)

At the time the oral order was given to me the Secretary of the Navy was in charge of the naval petroleum reserves. Commander H. A. Stuart was detailed to the office of the Secretary and his duties pertained to naval petroleum reserves. I requested the retention of Stuart in the Bureau of Engineering after I took charge of the reserves. The request was made at once on October 8, 1921. I first told the Secretary I wanted to hold on to him and I supplemented that with a formal written request from the Bureau of Navigation for his retention in my office. I identify the letter of October 8, as that formal request.

Letter, Robison to Bureau of Navigation (Def. Ex. H) offered.

Navy Department

Bureau of Engineering

Washington
D. C.

8 Oct. 1921.

From: Bureau of Engineering.

To: Bureau of Navigation.

Subject: Commander H. A. Stuart, U. S. N.—Bureau recommended retention on Special Duty.

1. Commander H. A. Stuart, U. S. N., has been in charge of matters pertaining to the Naval Petroleum Reserves in the Bureau of Engineering since he reported for duty in the Bureau. During the last eighteen months he has devoted his time exclusively to this duty. He is thoroughly familiar with the laws pertaining to the establishment of the Reserves and with the many legal suits in connection therewith.

593 2. While the administration of these Reserves has recently been turned over to the Department of the Interior, the Bureau believes that it is highly necessary for the interest of the Navy to retain, at least temporarily, an officer for duty in connection with these Reserves. It is believed there is no one in the Navy with as comprehensive a grasp of the situation as Commander Stuart and the Bureau therefore recommends that for the present he be retained on this duty.

J. K. ROBISON,
Chief of Bureau.

The order was issued transferring Commander Stuart to the Bureau of Engineering in pursuance of that request, some time in the month of October, 1921. I identify the order of October 24, 1921.

Order of Secretary of the Navy to Commander Stuart (Def. Ex. J) offered.

Navy Department

Washington

11612

24 October 1921.

From: Secretary of the Navy.

To: Commander
Harry Stuart, U. S. N.,
Office of the Secretary of the Navy,
Navy Department.

Subject: Change of Duty.

1. You are hereby detached from duty in the Office of the Secretary of the Navy, Navy Department, and from such other duty as may have been assigned you; will report to the Chief of the Bureau of Engineering, Navy Department, for such duty as he may assign you.

2. This employment on shore duty is required by the public interests.

EDWIN DENBY.

I began to execute the verbal order of the Secretary of the Navy at once. I familiarized myself with the Executive Order of President Harding dated May 31, 1921, Exhibit A to the Bill of Complaint. I had nothing to do with the preparation of that Executive Order. I also obtained touch with the officials of the Interior Department, the Secretary, Mr. Fall, the Assistant Secretary, Mr. Finney, the Director of
594 the Bureau of Mines, Dr. Bain, and his Chief Petroleum Technologist, Mr. Ambrose. I went to see them. I went to Secretary Fall as an emissary of Secretary Denby. I told him that it was the Secretary's desire that I take personal charge of all matters in connection with the naval petroleum reserves thereafter. He sent for these other gentlemen or sent me to their offices.

My recollection is that I went to the office of Judge Finney and that the other gentlemen were sent for by Secretary Fall in his office, and that I accompanied them to the office of Dr. Bain. That was on the 9th of October. That was the first thing I did. Thereafter I consulted Stuart and consulted the records of the Navy Department to familiarize myself as well as I could with the detailed history of all reserve matters.

At the time I took charge of the Reserve Commander Stuart had an office in the Bureau of Engineering. The records in relation to the reserves were kept in his office. There was no transferring of records involved in the transfer of jurisdiction. I studied the records. I would not like to say I knew everything that was in them, but I studied them conscientiously and I believe I became familiar with them. I had conferences with Commander Stuart concerning what he had done during the time that he had been in charge of the naval reserves; as to his ideas chiefly and as to the details of certain suits and certain applications for leases etc. These were matters of rather minor importance in connection with a grasp of the entire situation that I desired. Aside from the examination and study of the records in the Department I made other studies of matters pertaining to the naval petroleum reserves. Of course I was trying to get a little extra light if I could and I read the Trade Journals; and I studied the application of the problem to our war plans, if that is what you mean. Those things are not matters of record, but they were included in my study.

In the course of my examination of this subject I came across the letter of July 23, 1921 (Pl. Ex. 2), and also Admiral Potter's memorandum to the Secretary of the Navy of July 29, 1921 (Pl. Ex. 4), also the letter of Secretary Denby to Secretary Fall of July 29, 1921 (Pl. Ex. 3). Having made the examination and study to which I have referred, having read the documents and the letters which have been presented to me, I formulated a letter for the signature of the Secretary of the Navy, dated October 25, 1921 (Pl. Ex. 5). Prior to writing that letter I had made an investigation regarding the condition of the several naval reserves. I do not mean by going to the property and investigating it, but through the means I had at hand. I found the condition to be respecting the absence or presence of drainage, that No. 2 reserve practically was non-existent as a reserve on account of the checker boarding. No. 1 reserve was suffering very serious drainage in the northeast corner. No. 3 reserve was apparently not suffering any drainage at all. There was a report that there was drainage in No. 3 reserve, but I thought No. 3 reserve was pretty secure. The information I had regarding Number 3 reserve was that it was geographically separated from any draining wells, save at one neck in the northern end of it, where it connected with a producing field, and reports from the geologists indicated that this southern portion of the entire area, Salt Creek and Teapot Dome forming the one area, was in such condition that it

was believed No. 3 reserve was not being drained by the Salt Creek field. Against that there was one report from a man named Wegemann, that is about all. As Mr. Wegemann had been in the Government employ and had been one of those who had assisted in establishing the limits of Teapot Dome reserve originally, his report was interesting but it did not really create much suspicion in my mind. I thought that No. 3 reserve was pretty secure; not absolutely so. I recall seeing the letter of October 30, 1921, in fact it was in my custody in the Navy Department (Pl. Ex. 6), With reference to the following matter from the letter of October 25, 1921 (Pl. Ex. 5, viz:

"6. That the terms for conversion of the crude oil at the well to fuel oil at Tidewater, or in tanks to be provided by the lessor, will be submitted to the Navy Department for approval of the qualities, deliveries, engineering, and other features involved.

"7. That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only."

I may say that these paragraphs were not intended to apply at all to Reserve No. 3. At the time this letter was written the development of Naval Petroleum Reserve No. 3 was not contemplated and was distinctly forbidden by paragraph 9, which relates solely to Reserve No. 3, and reads

"9. That the development of Naval Reserve No. 3 is not to be undertaken except to protect the Government against depletion of the Reserve by other parties."

The last phrase was put in to provide against future contingencies. We did not know what contingency might arise which would in any way affect the reserve. Paragraph 7 above quoted had reference to leases under the Leasing Act of February 25, 1920, which gave to the Secretary of the Interior control of producing wells within the naval reserve property. Leases covering those wells were pending, claims were pending for other properties in the reserves, under the old acts that had been in force. Before the 25th of February, 1920, it had been the policy of the two departments to have all leases referred to the Secretary of the Navy prior to their execution by the Secretary of the Interior, leases that were to be granted under this act of the 25th of February,

1920. It was decided, and paragraph 7 was intended, to put into effect the idea that the Secretary of the Interior should make his decisions and to keep us informed of his decisions. We had not anything to do with the decision,—that is the decision with respect to leases under the Act of February 25, 1920. I think paragraph 7 is not very well drawn, but that was the idea of it.

I had a conference in the office of the Secretary of the Interior during the latter part of October, 1921, at which the subject of the Naval Reserve No. 3 was discussed. There were present the Secretary of the Interior, Dr. Bain, Mr. Ambrose and myself. The subject of the conference was the above quoted paragraph 9 of the above mentioned letter of October 25, 1921. Reference was made to the Wegemann report. I told them I placed little value on it, but it seemed to be something that it was right for us to know about. They agreed with me, to all intents and purposes, that the only thing that the Wegemann report seemed to necessitate was an investigation, and Secretary Fall gave instructions to
597 Dr. Bain that such investigation be made at once by the representatives in the field of the Bureau of Mines. You ask me to state all that was said by any of those gentlemen at this conference with reference to drainage of Reserve No. 3. That is three years ago and I had a great many conferences. It is almost impossible therefore to state that specific reports were made at one particular conference. The Wegemann report was discussed. I had read it; that was all. I have the report of Wegemann before me and that is the one I mean. It had just come to the Navy Department.

(See the report offered as part of the cross-examination of the witness Heald above, as Def. Ex. G.)

I do not remember that at this conference Bain or Ambrose said anything about having seen Wegemann and talked with him concerning drainage of Reserve No. 3. It might have been said at that time. The Wegemann report was merely a suspicion. I didn't give grave weight to it. At that time we decided to treat it merely as something worthy of investigation, but not worthy of action. In my presence direction was given by the Secretary of the Interior regarding investigation of this Reserve No. 3. He told Dr. Bain to have the matter investigated by the representatives of the Bureau of Mines in the field at Salt Creek. At that time I had knowledge of the effect which had been produced upon the naval reserves in California by drainage.

I don't recall any particular activity I was engaged in during November 1921 concerning Naval Reserve No. 3. I was engaged in matters pertaining to reserves Nos. 1 and 2 that month. I wrote the letter of November 30, 1921, to the Judge Advocate General of the Navy.

Letter, Robison to Judge Advocate General of Navy (Def. Ex. K) offered.

Navy Department,

Bureau of Engineering,

Washington, D. C. November 30, 1921.

To: Judge Advocate General.

Subject: Naval petroleum reserves, royalty oil from.

1. There is now accumulating for the account of the
508 United States Navy royalty oil from naval petroleum reserves Nos. 1 and 2 amounting to about 1,000 barrels daily. This amount is likely to increase in the near future. It is proposed to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be later designated by the United States Navy. It is planned that the tanks in which this exchange oil shall be stored shall be provided by the lessor of the oil wells. Will this be legal, it being presumed that the oil in storage at Pearl Harbor, as well as the tanks, and appurtenances are to become the property of the United States.

J. K. ROBISON, Chief of Bureau."

At the time I wrote that letter I had knowledge of the contents of the memorandum dated July 29, 1921, signed David Potter (Pl. Ex. 4). The subject matter of the letter of November 30, 1921 (Def. Ex. K) was discussed before the opinion was asked from the Judge Advocate General. The most important discussion of it was in the Secretary's council on or about the same date, November 30th. That council is a body of the chiefs of bureaus in the Navy Department, supplemented by other of the more important naval advisors that the Secretary has, presided over by the Secretary himself. It consists of about 14 naval officers. The Judge Advocate General and chiefs of other bureaus and I, as Chief of the Bureau of Engineering, were members of it, as were the

Chief of Naval Operations and the Assistant Secretary of the Navy and all the chiefs of bureaus.

The question of adequate fuel for the current operations of the fleet was brought up, I think being brought up by Admiral Coontz, chief of operations. There was a dearth of available funds under the appropriation for fuel and its transportation to the navy for that fiscal year. This dearth of funds was so great as to limit the fleet operations, and he recommended the execution of a policy set forth in the next to the last paragraph of Admiral Potter's memorandum to the Secretary of the Navy under date of the 29th of July, 1921, which reads as follows:

"In view of the greatly reduced amount available under the Appropriation 'Fuel and Transportation' for the present fiscal year, it would be of special benefit to the Navy to obtain royalty fuel oil at this time as such oil would not
5589 involve a charge against this appropriation."

The idea was, and it was supported by the Paymaster General,—Admiral Potter, to utilize the proceeds of royalty oil ensuing to the account of the Navy Department from reserves Nos. 1 and 2 by exchanging these royalty oils for fuel oil to be delivered to our ships in the Pacific without charge against the current appropriation. The royalty oils were not being derived for the benefit of the navy but they were being derived for the benefit of the Treasury. They would have been for the benefit of this appropriation if we had used them the way they were advocating. As things then stood the producing wells within the naval reserve properties in California were paying to navy account certain royalties aggregating a considerable sum every day. These royalties on oil being disposed of for cash, went directly into the Treasury of the United States in the form of miscellaneous receipts. Under that heading there has been paid into the Treasury something over $[illegible] on that money, once it had been paid into the Treasury, no advantage could be taken by the navy. All the royalty oil, however, that we could get under the authority of the law of June 4, 1920, and exchange it for products that would be of value to us, that is fuel oil, we could obtain the benefit of. The proposition, when it came my turn to discuss it, offered two grave objections. First, it completely defeated the idea of the reserves when they were created. They were intended to provide for us, I felt, a reserve against an emergency condition and not against a peace time need for appropriations. Again, it seemed to me that the use for current needs of this royalty oil would

defeat the announced intent of Congress in its appropriations, which were definitely, by the very fact that they fixed the sum, to limit us to that sum in our current appropriations. Secretary Denby stated, as soon as I had made those points, that to adopt the policy that had been suggested originally by the Paymaster General in his letter of July 29, 1921, would be a mere subterfuge. In this council it was suggested by Admiral Coontz, chief of operations, and chief naval advisor, I had no sooner announced the objections to it from my point of view when Admiral Coontz supported me. He had not seen it before. I believe; and the decision of the Secretary of the Navy was almost immediate. Then I advanced the idea of transforming, by exchange, these royalty oils into storage oils, stored where we needed them against a military emergency, for which the naval petroleum reserves were created. That policy was discussed at some length, in the council at that time. I do not remember all who took part in it. The Assistant Secretary was one; Admiral Coontz was one. I told them that it was my belief that the royalty oils alone, utilized correctly for the accomplishment of this military reserve, might be able in the course of a comparatively small number of years, completely to accomplish the national defense plans.

National defense plans had been formulated at that time; they had formulated some plans previously. They were originated by the general board, and after some considerable discussion they were approved. I believe there was a good deal of discussion, but they were approved by the then Secretary of the Navy, Mr. Daniels.

The general board is a collection of officers of experience and rank who are created into a board for the purpose of giving advice to the Secretary upon certain questions he refers to them, and specifically to give advice to the Secretary upon questions of naval expansion and new construction.

I was familiar with the plans for national defense as formulated by the general board at that time. They were the plans for fuel reserves which were to be accomplished at certain specified points along the Atlantic and Pacific coasts and our island possessions. I do not know that they have ever been published. We called them secret. I think they have never been published.

As a result of this discussion in council concerning the various proposals the Secretary determined in council that he would take no action at this time, or rather until after the en-

tire legality of the proposition that I was advocating had been determined. As a result I wrote the letter of November 30, 1921, (Def. Ex. K.), at once to the legal advisor of the Navy Department, the Judge Advocate General. I think the legal advisor of the Navy Department is the Solicitor for the Navy Department; he is a subordinate in the office of the Judge Advocate General. I received an opinion from the Judge Advocate General in response to that request. It is the letter of December 2, 1921."

601 Letter, Judge Advocate General to Bureau of Engineering. (Def. Ex. L.) offered.

Department of the Navy

Office of the Judge Advocate General

Washington, December 2, 1921.

From: Judge Advocate General.

To: Bureau of Engineering.

Subject: Naval Petroleum Reserves—Royalty oil from.

References: (a) Bureau's letter dated November 30, 1921, 598(93) (080.6 C 20).

(b) Bureau's letter dated November 30, 1921, 598(0) (080.6 C 20).

1. Returned.

2. The Act entitled 'An Act making appropriations for the Naval service for the fiscal year ending July 30, 1921, and for other purposes' approved June 4, 1920, provides:

'That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use of the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled, 'An Act to provide for the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain,' or pending application for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States; And provided further, That the rights of any claimant under said Act of February 25, 1920,

are not affected adversely thereby: And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922: Provided further, that this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct.

3. The Act above quoted authorized the Secretary 'to use, store, exchange or sell the oil and gas products from the properties within the naval petroleum reserves, and those from all royalty oil from the lands in the naval reserves for the benefit of the United States.' The authority granted the Secretary of the Navy 'to store' this oil and its products, necessarily carries with in the authority to designate the place of storage and the authority to provide the means of storage. The authority granted 'to exchange' is unrestricted; i.e. the Act does not specify nor limit what may be taken in exchange for the oil and its products. Hence, if the Secretary of the Navy desired 'to store' some of the oil and its products, he has the authority to 'exchange' a part of the crude oil for fuel oil or for tanks or for both fuel oil and tanks under such arrangements as he may see fit to negotiate with the lessors or others; and said fuel oil and tanks, so received in exchange, may legally become the property of the United States. Furthermore, the Act makes available the sum of $500,000 until July 1, 1922, for such sums as have been or may be turned into the Treasury as royalties on lands within the naval petroleum reserves for the purposes of the Act quoted above. Therefore, any part of the sum of $500,000 now remaining unobligated is available to defray the expenses of 'storing, exchanging, or selling' the oil and gas products from the properties within the naval petroleum reserves, and those from all royalty oil from the lands in the naval reserves. If any part of this sum is expended for the purpose of using the oil by the United States, however, 'the proper appropriation' must be debited with a like amount.

4. Answering your questions, specifically, you are advised,

(a) It would be legal to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be designated by the Secretary of the Navy under arrangement

whereby the exchanged oil [shall] be stored in tanks provided by the lessee of the oil wells, such tanks and their appurtenances to become the property of the United States.

This. E. D. c. 5, 21

(b) It would be legal to use the royalty oil on board 603 vessels of the United States Navy and if so used, it should be expended at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct, and should be debited at the rate so fixed by the Secretary to the appropriation 'Fuel and Transportation.'

J. L. LATIMER.

5th December 1921

Approved

Edwin Denby
Secretary of the Navy.

That opinion came to me through the Secretary of the Navy. At the time the Secretary approved it he had me in his office and we discussed it. Before Secretary Denby endorsed his approval on that letter, he and I discussed it. The Secretary said that from the opinion of the Judge Advocate General two things were evident: First, that the policy that I advocated was a legal policy; second, that the policy originally advocated by others that involved the use of fuel oil without charging it against the appropriation would be an illegal policy; that he, under the circumstances, wanted to put into effect the policy that I had advocated, the one covered in paragraph 4a of the opinion of the Judge Advocate General, as follows:

(a). It would be legal to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be designated by the Secretary of the Navy under arrangements whereby the exchanged oil shall be stored in tanks provided by the lessees of the oil wells, such tanks and their appurtenances to become the property of the United States.

The idea of that policy was to accomplish the possibility of the naval plan for the national defense. What was to be accomplished particularly in the way of advancing the plans for the national defense was the provision of the fuel oil in storage at these strategic points where our study of the war, prospective war, had shown that such fuel reserves would be required in order that the fleet could be used to secure the nation.

Immediately after the Secretary of the Navy approved the opinion of the Judge Advocate General in my presence I had a talk with him in order to carry that policy into effect. He said to me: "Now that we have determined what we
694 shall do, what formal order or letter have I got to get out in order to put this idea into effect with the least possible delay?" I told him it would not be necessary for him, under the circumstances, to issue any formal order, but he could just put "O.K., E. D.", opposite the plan he wanted me to execute and I would go ahead with it. So he wrote opposite paragraph 4 a "Do this, E. D., Dec. 5th, 1921." That was the moment when the determination was made by the Secretary of the Navy as to what we should do. My understanding as to the policy which was then decided to follow respecting the use of naval oil reserves by the Navy was this: There was a revenue, which was considerable, from the exploitation of the reserves, which revenue theretofore had not accrued to the benefit of the Navy, and which revenue thereafter would accrue to the accomplishment of the original intent of the creation of the reserves. And that original intent was, as I understand, and understood it, the provision of a reserve of fuel for use in case of National emergency. I talked with the Secretary of the Interior regarding the opinion I had received from the Judge Advocate General of the Navy. I prepared for the signature of the Secretary of the Navy a letter to be sent to the Secretary of the Interior respecting the opinion of the Judge Advocate General of the Navy about the middle of December. It is dated December 14, 1921. (Said letter offered as Def. Ex. A in the cross-examination of E. C. Finney). Prior to the writing of that letter I had already been in communication and in contact with the Secretary of the Interior and the officials of the Bureau of Mines concerning the naval petroleum reserves. This did not change my status in any way, but made it a matter of record. It was confirmatory of my status as personal representative of the Secretary of the Navy, that had existed from the 8th of October, 1921.

I next had a conference with the Secretary of the Interior concerning Naval Petroleum Reserve No. 3, in the office of the Secretary of the Interior the latter part of January, 1922. Dr. Bain, Mr. Ambrose were present. Secretary Fall started out by telling me that the reports from other
695 people in the field were unfortunately confirmatory of the Wegemann report in general terms; that in particular they confirmed the existence of grave danger

of drainage No. 3 reserve. Both Dr. Bain and Mr. Ambrose confirmed that statement and I suggested that, in view of our California experience, action should be immediate;
606 that we were not going to repeat the grave losses that we had suffered in the northeastern corner of reserve No. 1. They agreed that that should be done and I do not remember whether we went any further with it that day or not; but I know I took it up with Secretary Denby and gave him the information, information that the danger of drainage of No. 3 reserve was grave, that the people in the Interior Department recommended immediate action for the protection of our property. I confirmed that with my personal recommendation that that action be taken and he directed me to proceed at once to accomplish the opening and development of the No. 3 reserve as a whole. The reason for the development of No. 3 reserve as a whole was because of my insistence upon the necessity of a pipe line in order that the reserve in that portion of our country could be made military reserves, and the creation of a pipe line was a matter of so large an investment of capital as to require more than a partial development of a small section would involve. Furthermore I told Mr. Denby, repeating, I believe, what I had been told by such technical men as Mr. Ambrose, that no small development, no single line of wells across the neck would, I believe, really furnish us complete protection against drainage by Salt Creek. He said he did not much like to make any unnecessary development. I told him that the unnecessary development was a matter that depended upon a big question, that the complete protection of our property could be secured with certainty only by complete development. I told him that probably with a less development, the drainage of the property might be secured against, but if we protected the property against drainage without securing a pipe line we would not have military availability. He agreed on those grounds, connected directly or indirectly with the strengthening of the national defense, to undertake the development of the complete reserve. Prior to that time I had given the subject of pipe lines consideration in respect of naval requirements. The first time that the subject of pipe lines was given much consideration by me was during the war, when the question of developing a supply of fuel oil for the allied fleet was a grave one, on account of losses of tankers through submarine activities. I
607 advocated the construction of a pipe line from Tampico to Texas, connecting up with the entire mid-continent transcontinental—that is with the eastern coast

—pipe line system, enabling us to pump oil up through the entire Mississippi Valley, and making practically the entire movement by tankers from Mexico unnecessary. Of course that idea was not put into effect. It was altogether too expensive. Later, during the war, I was in New York when the amount of freight sent there was so great that there was almost complete paralysis of our transshipment and loading, even in the port of New York. They would ship things there so fast that the terminal facilities and railroad facilities were inadequate to take care of it.

Adequate rail facilities measure, in one way, the capacity of the nation to accomplish its defense. During the war it became necessary to re-route freight, to divert it from New York to other eastern coast ports, to Charleston, New Orleans, Boston, Baltimore and Jacksonville, Florida. I had studied the defense plan for the Pacific campaign most intimately for more than a year. They involved the transcontinental shipment of enormous quantities of men, provisions, of munitions for the waging of a war on the Pacific of a major character. Transportation by transcontinental rail facilities would have been, according to our study, even with the best of success in the operation of all the transcontinental railroads, inadequate to supply the gross need of the nation. The development in Wyoming of an additional load upon the railroad transportation facilities, which would be involved in the utilization for military purposes of the oil from the Wyoming field, was simply taking one transcontinental railroad out of service. It would have required about four or five freight trains each way each day to carry the oil out of that territory. The pipe line, so far as the national defense was concerned was equivalent, if the Wyoming field were to be considered—and I included the Salt Creek field because the commercial production in time of war would have been used by us—the pipe line would have been equivalent to the adding of an additional railroad to the ability of the country to win the war. I thought it was of very great, and I think it of very great importance. I had given the subject consideration
608 in determining the policies which I thought should be adopted by the Navy Department respecting Naval Reserve No. 3. I had discussed that with Secretary Denby several times. I kept Secretary Denby informed of the information that I got and of the conferences that I had. This was the principal job that I had, and it was one of his jobs, so I do not suppose he was intimately familiar with as

I was. From time to time during the period when I was in charge from the 8th of October, 1921, and running through the period having to do with these naval reserves, I was in constant communication with the Secretary of the Navy. I think I conveyed to him all the information I obtained. I tried to. I never had a conference with anybody in the Interior Department that he did not know about it. Sometimes we discussed beforehand what I should take up; sometimes we discussed afterwards what had been taken up. Decisions were made by him. Before he made his decisions I kept him informed as to all that was going on. I talked with Secretary Fall regarding my suggestion concerning a pipe line. I certainly discussed it with him in the conversation we had in January, 1922. I might have done it before, but I did discuss it with him at that time. I told him it was necessary; that it was one of the conditions the Navy would insist upon if Teapot Dome was to be opened up.

After this conference with the Secretary of the Interior and the representatives of the Bureau of Mines in the latter part of January 1922, the Secretary of the Navy told me to go ahead and make arrangements for the opening up of the reserve in accordance with the plans as I have set forth and as I have described. I communicated that decision to the Secretary of the Interior. I told him the navy would require the building and filling of fuel oil storage along the Atlantic coast at certain points, that I would let him know about later on and according to plans that I would furnish him later. The quantities I was not able to give him in detail at that time, but I gave him an approximation as to quantities. The pipe line I insisted upon. I talked with him about the manner in which it should be leased, whether it should be leased to a number of persons or to one company or person. I say I insisted on a pipe line. I
609 insisted on the ability to exchange the crude oil which we were expecting to get in much larger quantities than we did obtain, that we must have the power to exchange that crude oil at the wells in Wyoming for quantities of fuel oil that would be stored along the Atlantic Coast. This restricted the possibility of accomplishing our needs to some large independent oil concern, not the Standard oil. I told the Secretary of the Interior that we undoubtedly had to deal with some big oil company other than the Standard Oil interests, because it did not seem there was any one else who could do it. At the time I recommended that Reserve #3 be developed as a whole, and the decision was made by

the Secretary of the Navy to develop it there were other considerations which moved me in taking the action I did. There is not a decision which you make in the Navy Department that is not primarily based upon considerations of national defense, and that always entered into any decision which was made in the Navy Department. It occupied a very important part, a very important place in the decisions in this connection. Aside from that, and from the economic necessities, I do not know of any other motives that we had. The question of national defense includes the whole mission of the Navy. Referring solely to Teapot Dome, the particular things which could be accomplished for the benefit of the national defense by making the lease in the manner I have suggested were: First there was a provision for military reserve located where we would need it, if we had trouble on the Atlantic. The quantities were those that had been computed by those directed to do such things, as the plans required, in order that it be possible for the Fleet to accomplish with success the national policies in the Atlantic. Second, the pipe line added to our transcontinental facilities, added to the general reserve on which we can count in time of war, which is the entire national production—not merely the production we would get out of Teapot Dome, but also the production of commercial as well as government royalties from Salt Creek, all handled in such a way that delivery of the fuel product from the field could be made
where we wanted it, anywhere from the Gulf of Mex-
610 ico to New York. These things combined to decrease
the demand for tonnage. We would not need so many tankers to supply the national need in time of emergency; we would not have to use nearly so many vessels; it would decrease the number of men required to win a war, the number of ships required to win a war, the number of days required to get ready to fight. It would decrease the
danger of our ships being tied up for lack of fuel. It
611 might make the difference between the possibility of
victory and the certainty of defeat. At that particular time there was a condition within my knowledge concerning the relations of the United States with other nations that had an effect upon my action. I discussed these matters that I have related to with Secretary Denby in general terms only before he decided that this Naval Reserve No. 3 should be leased. The subject was discussed between us so that he was familiar with the facts I have just stated. They were discussed repeatedly. His first instructions to me, at the time I was told by him that I had

been nominated to become Engineer in Chief, were that all my decisions and all my policies must be subordinated to the strengthening of our naval plans for the national defense, and the accomplishment of the possibility of securing our national defense. Those were his primary instructions to me, and I acted upon them. These matters that I have already related were taken into consideration by me in determining what was best for the interests of the United States in respect to the leasing of Naval Petroleum Reserve No. 3. The leasing of Naval Petroleum Reserve No. 3 was a small part of the general policy. The first result of serious consideration of conditions that would exist in time of war with Japan is that unless the United States controls Honolulu and holds it in sufficient force actual invasion of our Pacific Coast is possible; particularly is that possible provided there is a combination of the Japanese and British forces for us to cope with, as was then the case or, as then would have been the case, under the treaties that they had. In order that our fleet could hold Honolulu—and understand I had worked over that particular detail for more than a year—we had to have as the very first requisite an adequate fuel oil supply at Pearl Harbor, which is the naval base in the Hawaiian group. With the great superiority in force that we would have to cope with in fighting the combined British and Japanese navies, we would not hope, perhaps, to defeat the combined forces of those two navies in a single action, but if we alone held an adequate base in the Eastern Pacific, no power could be strong enough to bring about such complete control of that portion of the Pacific Ocean that has got Honolulu in one corner. That particular portion of the Pacific Ocean would remain
612 under American control. In saying that I assume, of course, that the American armed forces would have made it impossible for the enemy force to depend upon any Canadian base, for instance in British Columbia. The key to it all was the oil in Pearl Harbor. They might well stop the supply of oil for a time, but if we have got enough there to maintain our forces for a considerable period we can, within a month or so, reestablish our control of the lanes between San Francisco, Los Angeles and Honolulu, and we can make it impossible for them to accomplish a conquest or victory over us. That is the big thing. The practical way the leasing of Naval Petroleum Reserve No. 3 would have helped to accomplish the security of the national defense was, as I stated above, that it would add one to the number of transcontiental railroads through the pipe line.

It would secure our Atlantic Coast with the supplies that would be necessary in order to protect the Atlantic Coast; it would decrease the demand upon the nation during time of war for tankers, vessels used to supply fuel oil to places where they haven't enough of them. For instance, our northeast coast uses a great deal of fuel oil, petroleum, and if we can get the oil there beforehand, we haven't got to wait until we can get it before we are ready to begin. Assuming that the oil had been allowed to remain in the ground in Reserve No. 3 and assuming that the reserve was not being drained, the length of time it would have taken to have got ten it out and transported it for the purpose of using it in naval operations would depend, of course, upon the degree of necessity. If the necessity is grave; if the success of the whole nation depends upon getting that oil out of the ground and taking it to the fleet I think you could do it in about nine months; I do not think any less. These matters I have related were of primary importance to me at the time I made my recommendations to lease this property.

I first met the representatives of the Sinclair Company in the latter part of January, 1922. I met Mr. Harry F. Sinclair and Col. Zevely in the office of Secretary Fall by appointment, arranged by Secretary Fall. I had a discussion with them concerning Naval Petroleum Reserve No. 3. This was subsequent to the order of Secretary Denby to go ahead with the lease and develop the Naval Reserves. I set
613 forth to them our ideas in the matter as follows: That the reserve should be developed as a whole, that a pipe line should be constructed of adequate capacity to care for the production of the field; that the naval proceeds from royalties should be directed towards the erection and filling of a specified storage facilities along the Atlantic Coast; that the exchange be operated without the use of cash; that the oil from the wells should be used in exchange for the accomplishment, for naval account, of the facilities to be created. I mean the royalty oil. I outlined to them what would be required by the Navy from any contractor we might lease Naval Petroleum Reserve No. 3 to as I have indicated above. As I have said, that meeting occurred in the latter part of January, 1922.

After that my attention was directed to a letter signed by H. F. Sinclair, dated February 3, 1922 (Pl. Ex. 17.) It was brought to my attention by Secretary Fall. That letter contained certain of the terms which I had stated to Mr. Sinclair at the conference in the last part of January that the

Navy would require from any contractor leasing Naval Reserve No. 3. I have in mind paragraph 6 of that letter, reading, "I will undertake to furnish for the use of the Navy along the Atlantic Coast and the North Coast of the Gulf of Mexico, fuel oil in exchange for that portion of the oil that may be produced for the Navy in accordance with the terms of the contract. This exchange of oil would involve the necessity of building storage on the Atlantic Coast and the northern coast of the Gulf of Mexico sufficient to take care of the Navy's needs. I would also undertake to supply this steel tank storage." I find a reference to the pipe line in paragraph 5, reading, "In the first instance, I will undertake to construct and build sufficient steel storage to take care of the production until such time as it can be determined whether or not the volume of production is sufficient to warrant the building of a pipe line to connect the Wyoming and other far western fields with the markets of the world. The building of this storage and construction of this pipe line, which would be approximately 1000 miles in length, would require an expenditure of a great many millions of
614 dollars." That letter of February 3, 1922, was brought to my attention about the next day, February 4th. Subsequent to that I had no negotiations with representatives of the Mammoth Oil Company which led to the lease to the Mammoth Oil Company, dated April 7, 1922. I did have negotiations with officials of the Interior Department. I was in constant touch with them in connection with the development of this contract and lease, setting forth in more detail than heretofore, our requirements. I went over the rough draft of the contract, making certain suggested additions or changes therein. This was done with the Secretary of the Navy.

615 During the time that I was negotiating with the officials of the Interior Department the Secretary of the Navy was made aware of all of the negotiations as they took place. I never had a conference with the Interior Department, wherein anything new was brought up, that the matter was not immediately made known to the Secretary of the Navy. Sometimes where I knew before hand what the subject of the conversation was to be, I would confer with the Secretary beforehand so as to be sure that the proposition I should advance would be advanced with his approval. I conferred during these negotiations with the following officials of the Interior Department: Mr. Ambrose, the chief petroleum technologist of the Bureau of Mines, chiefly; Mr.

Fall, Secretary of the Interior, and Dr. Bain—no, Ambrose and Fall were the only ones. The Secretary of the Interior told me about the fact that he had had a proposal from the Texas Company. The proposal from the Texas Company was referred to me, or the terms of it were referred to me. I agreed that they were not so good as those we were being offered by Mr. Sinclair. Mr. Fall also stated his inability to obtain proposals from one or two other companies. He further stated that he thought he could obtain proposals from the Midwest Company, but he did not suppose they would be valuable to us, because it would be perpetuating the control of the entire Wyoming field in that particular interest, and it would call upon them to defend the Government's interests against themselves—obviously valueless to us; so we concluded that the best offer that we could get was the one we had under consideration from Mr. Sinclair. By we I mean first Secretary Fall, second, so far as I am concerned, myself, and third, Secretary Denby. Of course a similar opinion was expressed to me by Mr. Ambrose. Secretary Denby went over the figures as I related them to him and agreed that the best terms, no matter where they came from, should be accepted, and that the terms we were being offered were the best terms. During the course of the negotiations I should say that I saw the Secretary of the Navy on this subject from three to five times a week, maybe more. I always reported to him on these occasions the progress of the negotiations and I discussed the subject of the negotiations with with him as they progressed.

616 I have seen the lease and I am familiar with its terms. I have the lease before me (Exhibit B of the Bill of Complaint). I had a part in the formulation of the preamble. The preamble was written by Secretary Fall himself, and included in the first paragraph of the preamble, the second paragraph of the preamble, the fourth paragraph of the preamble, the specific aims of the Navy Department in connection with development of Naval Petroleum Reserve No. 3; the third paragraph of the preamble, the competitive market and the best price for royalty oil received reflected the advantage that we obtained. That was due entirely to information that we gained through our association with the Interior Department in the matter. That advantage was the introduction of the Midcontinent Oil Field prices as the basis of price for the royalty oils sold by the Government or for the Government account in the Salt Creek field. The Salt Creek field has been isolated from the oil fields connected with the gen-

eral pipe line system of the country and the crude oil in Salt Creek had been selling at a considerably lower price than obtained throughout the Midcontinent region for oil of similar quality. Further, it was a fact that the refined materials were selling in the same region for a higher price than obtained in other territories in the Midcontinent region. As a net result of the monopolistic control of the product of the Wyoming field they had an advantage greater than was accruing from any other field through the combined freight differentials on the crude oil from Salt Creek to pipe line territory, on the one hand, and on the other hand the freight differentials on the refined product from the refineries to this territory. I knew at that time that the Bureau of Mines of the Department of the Interior had under its supervision a large number of wells in which the government was entitled to royalties. I think almost the entire Salt Creek region is government property. The Bureau of Mines is exercising governmental control in that region. I think about 90 per cent of the oils from the Salt Creek field are royalty oils and the other ten per cent from patented land or school lands, and that portion of it that is government oil is handled by the Bureau of Mines for the account of the Interior Department, and the royalties therefrom go to the State of
617 Wyoming in part, to the Reclamation Service in part, and to the public Treasury; so that the Secretary of the Interior had a position regarding that particular oil that was more or less that of a fiduciary agent, I suppose.

While performing my duties as Chief of the Bureau of Engineering, particularly with relation to these naval oil reserves I made an independent study of the prices of crude oil and the prices of fuel oil in the oil industry generally. It was such as I gleaned from magazines devoted to that purpose, and from the market prices as published. I did not attempt to determine the variations in prices within a given field, but I did attempt to determine the way prices had varied at different points such as the Gulf Coast, in the Midcontinent field, in Wyoming, along our Atlantic seaboard, for the crude oil and for the product we were desirous of obtaining, namely fuel oil. Fuel oil, of course, is not sold in Wyoming and is not quoted in these reports.

When it came to the question of fixing the terms of this lease I participated in that discussion and in the decision which was arrived at as to what the Navy should require in the lease. I had to do with the fixing of the royalties. That

is in paragraph 3 of Article 2, headed "royalties." It includes royalties on gas and casing head gasoline, which is usual, but the sizes of the royalties are different from what were originally proposed. I succeeded in getting the value of those royalties changed from 12½ per cent throughout to 16 2/3 per cent for casing head gas and for the dry gas above 3,000,000 cubic feet. The original proposition provided for a straight one-eighth royalty. That is on gas and casing head gasoline. The size of that royalty as now shown by the contract, is greater than was originally proposed.

Also in paragraph 3-b, under the same Article 2, is set forth the royalty on the oil produced. There was considerable discussion as to those royalties. I wanted them to be as high as we could possibly obtain, because the size of these royalties measured the value to the Government of the contract. Computations were made and checked by myself, although the valuable part of the work was done in the
618 Bureau of Mines, because they were based upon the production of the adjacent wells in Salt Creek. These computations were intended to determine what the probable returns would be to up on the variable average well production as set forth in the table given in the contract. It appears from those computations that with well production similar to what experience had shown in the Salt Creek field, that the actual average royalties payable to the government would be higher than on the scale that they had given,—the scale in the lease of April 7, 1922—the scale I am referring to here. They did add the figures for royalties passing above 400 barrels and up to 1,000 barrels plus from the average well at my instance. I think the original form as proposed included 35 per cent at the top limit. As finally agreed upon it ranged from ⅛ to ⅙. That is for oil of 34 degrees Baume or over. That was the only oil that we knew about that we would get there. It was, of course, possible for oil to be obtained from the lower sands, as yet unexplored, the so-called Lakota sands, which might be of a lower gravity, and the tables shown on the top of page 27 here, which were included in the contract, provided for lower royalties for those classes of oils.

I familiarized myself with the character of crude oil that was being produced in the Salt Creek field and the character of oil that was expected to be produced from Naval Petroleum Reserve No. 3. The oil expected to be produced from

the reserve was not primarily suitable for fuel oil, although a certain amount of its remainder could have been used for fuel oil. It is a parrafin base oil of very high gravity. Some 60 per cent of it, I think even above 60 per cent of it, can be made by modern methods into gasoline, but the lighter petroleum products, the residue, would be available for the heavier products such as lubricants and parafine itself, and fuel oil. The oil as it came from the wells, was unusable, I think, for almost any purpose. It was not good oil for use in a Diesel engine; it certainly was not good fuel oil. The lighter products had to be distilled off of it, but it was possible to use that oil by exchange and obtained the fuel oil; that is to say, a barrel of this oil from Naval Petroleum Reserve No. 3,—a barrel of this oil, plus a couple of barrels
619 from the Smackover field, for instance, down in Louisiana, the combination would furnish us a barrel of gasoline and barrel and a half of fuel oil; so that although perhaps not a single drop of the oil itself might ever appear in the bunkers of our ships, yet a barrel of oil in Wyoming, in combination with other oils produced in the country, gave us the equivalent of a modicum of fuel oil in fact as well as in value.

When it came to the question of fixing the rate of exchange of crude oil for fuel oil, I figured it out and went over the prices, and on page 31 of the Bill of Complaint it is found, "One barrel of such fuel oil for each barrel of crude royalty oil at 34° Baume, or over, represented on the face of the certificate. 63 per cent of one barrel of such fuel oil for one barrel of crude royalty oil of less than 34° Baume represented on the face of the certificate," and so forth. The determination of those ratios was determined after I had computed those prices for a period of years. I mean, the prices of crude oil in the Wyoming field, Salt Creek in the Midcontinent field, the prices of fuel oil at the Gulf ports and the various Atlantic ports, such as are listed on page 31 of the Bill of Complaint. It was apparent that in the past one barrel of crude oil had been worth a little less than a barrel of fuel oil. It was worth a little more than a barrel of fuel oil at the Gulf ports and a little less than a barrel of fuel oil in Norfolk or New York. That is the Midcontinent price of crude oil. The crude oil in Wyoming was much less in price than the crude oil from the Midcontinent field some 60 cents or 65 cents, as I recall it. I took an active part in determining what the ratio of exchange should be. I checked the figures and the barrel for barrel figures appeared to me to

give to the Navy about 7 per cent advantage over what our past experience had been, and therefore, it occurred to me and appeared to me that it was better than what we were entitled to, and I had no objection to it. Without going into the details of other provisions of the lease, I was familiar with them at the time they were being negotiated and when they were finally agreed upon. Before the lease was prepared in final form it was submitted to the Secretary of the Navy. When the rough draft of it was ready it was submitted to him and we made some few changes in it. I mean the Secre-
620 tary and myself worked over it word for word, paragraph by paragraph from one end of it to the other. We found several places in it where we thought certain changes should be made to the advantage of the Navy and to the better protection of the Navy's interests, and we suggested those changes and those changes were incorporated in the final draft. After the final draft was submitted to me I again went over it with the Secretary of the Navy. We went over the thing in its entirety, but not so thoroughly as we had done before, because a good deal of it was identical with what we had already gone over at length, and where it was identical and satisfactory, we would say, "That is the same as before, that is all right; have they got in there what you want at such and such a place; yes, here it is, that is all right", and we passed on until we had gone over the entire thing. Secretary Denby had gone over the entire contract with me that way. He held it in his office for some time. I do not know how much more study he gave to it independent of myself, or whether he was advised by other people about it. I was present at the time he executed it. He had it in his possession prior to executing it pretty nearly a week.

After the execution of the lease I considered the question of entering into a supplemental contract to carry out the provisions of the lease of April 7, 1922, so far as it contained a provision requiring the lessee to provide storage for the oil. That eventuated in the supplemental agreement of February 9, 1923 (Exhibit C of the Bill of Complaint), which I have before me. Request was made by the Navy Department upon the Interior Department to enter into an agreement such as the agreement of February 9, 1923. I prepared a letter, dated January 26 1923, addressed to the Secretary of the Interior and signed "Edwin Denby," which is the letter of request. A great deal of the information in this letter came from Admiral Gregory, Chief of the Bureau of Yards and Docks. I also wrote another letter to the Secre-

tary of the Interior and signed it as the personal representative of the Secretary of the Navy.

Letter, Denby to Fall (Def. Ex. M) offered.

The Secretary of The Navy

Washington.

621 26 January 1923.

My dear Mr. Secretary:

In accordance with the terms of the contract made April 7, 1922, between the United States of America, acting by the Secretary of the Interior and the Secretary of the Navy, and the Mammoth Oil Company, relating to the operation of oil leases and the construction of storage for petroleum products for naval purposes, it is requested that the Department of the Interior give the formal notice to the Mammoth Oil Company and prepare such supplementary contract as may be necesary to carry out the following program of storage:

That is Yards and Docks specifications

"(a) "Navy Yard, Portsmouth, N. H. (Y & D Specification

Fuel Oil	42,000 tons
Diesel oil	225,000 gallons
Gasoline	180,000 gallons
Lubricating oils	87,000 gallons

(b) Naval Fuel Depot, Melville, R. I. (Y & D specifications) (4803)

Fuel oil	84,000 gallons
Diesel oil	400,000 gallons
Gasoline	350,000 gallons
Lubricating oils	174,000 gallons

(c) Governor's Island, Boston Harbor (Y&D) Specification 4801)

Fuel oil	424,000 tons
Diesel oil	7,000 tons
Gasoline	1,800,000 gallons
Lubricating oils	900,000 gallons

(d) Naval Fuel Station, Yorktown, Va., and Navy Mine Depot, Yorktown, Va. (Y&D) Specification Nos. 4804, 4805, 4806, and 4807);

Fuel oil	2,000,000 tons
Diesel oil	30,500 tons
Gasoline	26,500 tons
Lubricating oils	13,800 tons

(It is proposed to have this work undertaken as four separate units of approximately equal size.)

In making definite arrangements with the contractor it is suggested that the following points are essential and should be covered:

(a) Upon the completion of storage facilities, these facilities should be filled with the petroleum products they are designed to carry.

(b) The rate of completion of any particular project—once this project has been started—should not be allowed to depend upon the rate of accretion of royalty oils. Any project once started should be pushed through to completion, as fast as economically practicable.

(c) The rate of undertaking the different projects should be made to depend upon the rate of accumulation of royalty oils, since these oils determine the rate at which the contractor is repaid. Balances calculated at set intervals—say monthly—should bear interest at, preferably, 4½ percent.

The contract should provide a systematic undertaking of the different projects herein listed, and for the undertaking of additional projects for the storage of petroleum products when, where, as and if required by the Navy Department—provided always that the payment for the construction and filling of storage facilities for reserve petroleum products shall be made solely from the royalty oils derived from the Teapot Dome lease, but that all revenues from this lease shall be available for the above purposes.

The Navy Department recommends that this work be carried out under the direction of the Chief of the Bureau of Yards and Docks in a manner similar to the work at the Naval Station at Pearl Harbor, T. H., as outlined in your letter of May 5, 1922, and that the Chief of the Bureau of Yards and Docks be authorized to issue to Mammoth from time to time as may be deemed necessary by him such drawings, specifications and other instructions as are required to define the work to be undertaken and to provide for the storage of the petroleum products in the quantities listed
622 above and the accessory facilities necessary thereto.

It is desired that the work of constructing the storage plants under this order shall be performed in accordance with the instructions of and to the satisfaction of the Chief of the Bureau of Yards and Docks, or his properly accred-

ited representative. It should be performed under the direct supervision of the engineering organization of the Mammoth Oil Company. Insofar as it is practicable, the work should be divided into subcontracts covering the various classes of work at each establishment, and these subcontracts should be awarded on a competitive basis to the greatest degree practicable. Whenever estimates prepared by the Mammoth Oil Company for any portion of the work indicate that it can be performed directly by that Company at a less cost than by subcontract, the work should be done by the Mammoth Oil Company's organization. Final approval of all of such estimates and subcontracts should rest with the Chief of the Bureau of Yards and Docks.

It is further desired that the Mammoth Oil Company shall maintain an engineering and constructing organization of sufficient ability and capacity to provide economical supervision and direction of construction work. This organization shall carry out all work which it is not practicable to let under lump sum contracts, and any work which may be left uncompleted by any subcontractor. It shall closely follow the progress of the work, and shall take all requisite measures to expedite it. It shall handle all matters relating to the purchase and following up of delivery of materials, apparatus and supplies.

The cost of the construction work shall include commitments and expenditures for the following:

(a) The cost of all subcontracts.

(b) The cost of all materials, apparatus, supplies and labor, the cost of tracing shipment and transportation, and the cost of material and work inspection not included under (a)

(c) The cost of tools and construction plant purchased, and the rental of such, if hired, not included under (a)

(d) The cost of and the expense of maintaining a field office, including the salaries and expenses of a resident engineer accountant, and other necessary assistants.

(e) The cost of insurance and of contract bonds not included under (a)

(f) The cost incurred in connection with any accident or damage to persons or property, not included under (a)

(g) The cost of traveling and similar expenses.

(b) The cost of rights-of-way, permits, approaches, crossings, and other facilities necessary for the prompt carrying out of the work and not included under (a).

Mammoth should be instructed to render monthly reports to the Chief of the Bureau of Yards and Docks, showing the progress and cost to date of the work as a whole, and in its various parts, and any other reports, estimates, or certifications required. These records, accounts, and vouchers in connection with the work, should, at all times, be open to inspection of the Chief of the Bureau of Yards and Docks, or his representative.

Should the Navy Department desire to have storage provided at other locations or should it desire to deviate from the schedule of quantities given above in order properly to develop naval needs, provision should be made for changes in contract as may be necessary thereto.

Upon completion of any supplemental contract that may be necessary properly to define the detailed procedure under this program, I will be glad to join you in executing it.

Sincerely yours,

EDWIN DENBY.

The Honorable,
The Secretary of the Interior,
Washington, D. C."

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623 Letter, Robison to Fall (Def. Ex. N) offered.

The Secretary of the Navy

Washington

26 January, 1923.

Sir:

There is forwarded herewith request upon the Mammoth Oil Company to proceed with the erection and filling of certain storage facilities for the benefit of the Navy Department in accordance with the terms of said Company's contract with the Government dated 7 April, 1922.

It is requested that the Department of the Interior proceed with the preparation of the formal supplementary contract for the accomplishment of the purposes listed; and, upon the completion and approval, I will be glad to execute jointly with yourself.

The accompanying request for construction of storage facilities for petroleum products is approved.

In making definite arrangements with the contractor the Mammoth Oil Company, it is suggested that the following points are essential and should be covered:

Mr. Hoover: This carries the same provisions as are in the other letter. I will not read them, unless your Honor desires me to do so.

"It is desirable that the formal order to the Mammoth Oil Company take the form of a supplementary contract, the general purpose of which should be stated as the transformation as rapidly and efficiently as possible of royalty, oils from the so-called Teapot Dome lease into usable petroleum products required for naval operations located, with necessary storage facilities, at such points as required by the Navy Department.

The contract should provide a systematic undertaking of the different projects herein listed, and for the undertaking of additional projects for the storage of petroleum products when, where as and if required by the Navy Department—provided always that the payment for the construction and filling of storage facilities for reserve petroleum products shall be made solely from the royalty oils derived from the Teapot Dome lease, but that all revenues from this lease shall be available for the above purposes.

The Navy Department recommends that this work be carried out under the direction of the Chief of the Bureau of Yards and Docks in a manner similar to the work at the Naval Station, Pearl Harbor, T. H., as outlined in your letter of May 5, 1922. If this procedure is agreeable to you, it is suggested that you address to me a letter of similar form, making this designation.

Respectfully,

(Signed) JOHN K. ROBISON,
Rear Admiral, U. S. N.,
Engineer-in-Chief
(For and as personal representative of, the Secretary of the Navy)

Honorable Albert B. Fall,
Secretary of the Interior,
Department of the Interior."

I took part in the negotiations which led up to the formulation and execution of the supplemental agreement of February 9, 1923 (Exhibit C of the Bill of Complaint). In the course of the negotiations I reported to Secretary Denby in detail what I was doing. As in all cases of my connection with any part of the oil reserve business, the Secretary
624 of the Navy was completely informed of every single thing I did, and of every single project that was under way. I did not act without his approval directly. I went over the supplemental agreement of February 9, 1923, with Secretary Denby, every paragraph of it. It is my recollection that this contract, supplemental contract and lease was referred to the Judge Advocate General in my presence, but I am not sure that I saw the lease itself referred to the Judge Advocate General. I was present when Secretary Denby signed the supplemental agreement. My name appears as a witness. I know of my own knowledge that before he signed it he had gone through it thoroughly and familiarized himself with its terms and conditions. We had gone over the contract in detail together.

In addition to the Naval Reserves Nos. 1, 2 and 3, the United States had at the time these agreements were made the shale reserves in Colorado and Utah with very considerable oil content. I do not know the oil content of them. It is in the hundreds of millions of barrels they have estimated it, rather than in barrels—billions of barrels, really, I think. They are supposed to hold 2 billion barrels, maybe 4 billion. Nobody knows exactly what we can recover from the shale reserves, but it is a very enormous figure, once a process has been developed and made economical. I have been told that oil can be produced from the shale reserve for $2.75 a barrel. These reserves are held as naval reserves.

I was reasonably familiar with the practice of other nations with regard to the storage of oil for naval purposes. For purposes of comparison with the policy and plan shown by the lease and agreement in this case, I may state as follows: Great Britain has expended for naval fuel oil storage facilities something in excess of seven million pounds since the great war and now holds approximately $14,000,000 worth of fuel in storage. These storage facilities are located in various places in the British Empire, in Kingston, Aden, Malta, Bermuda.

Japan has spent something like thirty million yen for similar purposes. Those figures, of course, overshadow any of

our expenditures for these purposes. Their conditions are different, of course. Ours is the [—] country in the
625 world with the largest present output of petroleum. We have available as war time reserve all of the stored petroleum held by commercial concerns in the country.

France, for instance, has practically a zero petroleum output. Their policy is to require all dealers in petroleum to maintain a supply of, to be exact, of six months sales. This storage is to be supplied at the cost and risk of the dealers and may not be decreased save with the approval of the French Government. It is held available for use by the French Government, chiefly for the French Navy.

I do not know what the Italian idea is. They have a means of maintaining the reserve through indirect taxation, similar to the French method, but I do not know the details of it.

Cross-Examination.

When I took up the oil reserve question with Secretary Fall about October 8, 1921, he did not make a declaration to me as to his policy, but made recommendation to me as to the policy to be carried out. He didn't say to me that the Department of the Interior expected to handle the drilling of wells on the naval reserves exclusively and that in future such matters would not be generally referred to the Navy Department. He did express a desire that such matters as were involved in the exercise of his authority under the Leasing Act be not referred to the Navy Department. I may have stated to Commander Stuart that Secretary Fall stated he expected to handle matters connected with the reserves exclusively, but I don't recall making such a statement to him or anyone else. I think that if I told Stuart that, I believed that such would be a good policy. I did state to Stuart that it was the intention to drill only such wells as were necessary to offset adjacent owner's wells, leased by private parties, but I didn't say that that was the intention of the Secretary of the Interior. I meant that was then the intention of both the Secretaries of Navy and Interior. The Secretary of the Interior did not determine the policy. I
was asked in the Senate hearings who originated the
630 idea of the exchange of royalty oil for oil in tanks or storage, and I stated that I originated that idea. I stated that Secretary Fall expressed surprise when I presented that proposition to him and I still say so. I was entirely familiar when I testified before the Senate Committee with the letters and memoranda of July 23d and 29th (Pl.

Ex. 2, 3 and 4), and I still say that I originated the idea. I give Secretary Fall no credit for originating it on July 23, 1921. I probably discovered the letter of July 23, 1921 (Pl. Ex. 2) about October 15, 1921. I didn't pay much attention to it. It may be that someone prepared a questionaire for me in February, 1924, which called my attention to it, but I don't remember. Somebody did prepare a questionnaire for me on this subject about February or March, 1924. I do not know who did it. I had so many of them that I cannot recall. There was one that was prepared by the counsel for the Pan American Company and forwarded to me and that called my attention to the mistake I had made in my testimony before the Senate Committee; called my attention to this statement that you have referred to. I do not recall how, in answer to that questionnaire I explained the discrepancy that occurred.

Secretary Fall said to me when I first went to him about Naval Reserves that he was glad I had relieved Commanders Stuart and Shafroth. He said he didn't like them. That is all I ever heard from him about those officers. He didn't make a request to me that they be removed from Washington. I stated to Commander Shafroth, or repeated to him, Secretary Denby's remark to me, that Secretary Fall had said he didn't want those officers around his department any more. There was no question of their removal from Washington. Commander Shafroth said it was surprising Secretary Fall had not requested his removal from Washington and I replied that that was about what it came to, but that I had resisted that request. Fall never indicated to me he wished them removed from Washington. The reason for my statement to Shafroth was what Secretary Denby had said to me, that Fall didn't want these officers around the Interior Department any more. The reason Secretary Denby gave was that they had been insulting to the Secretary of the Interior in his own office. I told the same matter to Commander Stuart.

627 It was in the latter part of the month of October, 1921, that the matter of the exchange of crude royalty oil for fuel oil in storage came up in discussion. As I recall it was about the 20th. Secretary Fall and I discussed it as a possible means of handling the situation. I made the suggestion and Fall had not suggested it to me. He seemed surprised when I suggested the localities where I wanted the storage and the way I wanted it stored. I gathered, as I had gathered from his original letter, that he had planned to pro-

vide a different method of storage, that he was going to hold oil in the field in large measure, and arrange with owners of commercial storage along the coast to hold a portion of the naval oils—fuel oils, I should say—for the Navy account, this oil to be used for the current Navy needs. That is what I think was the limit of his idea. I so thought from what Fall wrote and from what he said. In addition to his idea of the plan I suggested that the fuel oil should be stored at strategic points to meet the military necessities of the Navy. He seemed surprised when I made that suggestion. If he had had such an idea in his mind prior to the time I made that suggestion [his] surprise might have been that I originated such a suggestion; but it didn't so appear to me. At that time I told him I had in mind storage facilities for fuel oil at Pearl Harbor. I do not know that I went into detail that that would involve wharfage, dredging and things of that kind. I didn't tell him that it involved the provision of all the facilities necessary to the proper receipt, safe storage and the ultimate delivery of the fuel oil in storage for the fleet. Those details must have come up about December, 1921. It might have been November. It was not until after we had worked them out. Secretary Fall expressed a doubt as to the legality of that proposition. I thought I convinced him that the matter was legal and he then agreed to go along with that policy. The first conference I had with representatives of the Interior Department touching the policy as to drilling the naval reserves was the latter part of January, 1922. My original conference with Secretary Fall took place on the 8th of October. He sent me to Assistant Secretary Finney's office, and he sent for Mr. Bain, the director of the Bureau of Mines, and for Mr. Ambrose, chief petro-
628 leum technologist for the bureau; I went with them to their offices, and I made a personal visit to the office of the Assistant Secretary. My original conference was with Secretary Fall alone. I do not recall being in a conference with all four of those people at any one time.

With regard to No. 1, there wasn't any question of anything except the leasing of certain additional lands in the immediate vicinity of a lease that had been recently put into effect covering the northern end of the northeast section of our reserve No. 1. That had been solved before I became Engineer in Chief. That contract was made in June, and was determined upon, as I recall it, before Mr. Daniels left office. Two additional leases in that area were considered, as I recall it, in December and January. One of them led to a lease in that section next to the Pacific oil development

there. In the latter part of October, at a conference where Dr. Bain, Mr. Ambrose, Secretary Fall and I were present, it was determined that representatives of the Bureau of Mines should investigate conditions on Teapot Dome. I read Mr. Heald's report (Pl. Ex. 16). I do not know when. I do not remember the report at all; I remember only the name Heald. I do not know what was in the report. I do not know [who] he came to make the report. I don't remember anything except the name. The report made little or no impression on my mind. I will have known at the time with whom Heald was connected. I do not know now. As I don't remember the report it could not have had little if any effect in any decision that I reached in regard to Reserve No. 3.

The Wegemann report raised suspicions in my mind. As a result of those suspicions it was determined, as I [understood], to have a report made by an official in the field already. I do not know that Mr. Heald himself was sent there. I do not know now that he was the man who made the report that stated that the Wegemann report was [ill-founded]. That report that Wegemann's report was well-founded, if it was Mr. Heald's report, had a profound value in our decision. I have now looked at Heald's report. I saw that report. It led me to believe that he thought there was some drainage in Teapot Dome. It was a factor that made
629 me feel it was urgent to grant a lease of Teapot Dome. I must have seen it some time in December. I think I discussed it with Mr. Ambrose. It was not the determining factor in the decision to go ahead, which was reached in January. I gave no weight to the recommendation of that report, which reads: "No further leasing should be done. The lands last leased will permit some slight drainage of unleased lands within the reserve, but this is unavoidable if an effective barrier is to be maintained between the producing wells and the underground storage." The report was not addressed to me. The leasing that he has referred to there I take it refers to leasing in the Salt Creek area outside the Naval Reserve. I now take it to mean that, and I did then. I do not think he referred, in using the expression "No [ruther] leasing should be done," to the question of leasing in the Naval reserve proper. He did go into a description of the way in which fractions of the Naval reserve should be leased, if the Naval reserves were leased, but I do not think he intended to have that phrase "no further leasing should be done" applied to the reserve, but to areas without the reserve in that portion of the Salt Creek territory that was adjacent to the reserve. I [to] not think there was much of

the adjacent Salt Creek territory then unleased. I think there was some. I think there have been certain leases in the Salt Creek territory that have been accomplished since January, 1922.

I never discussed the problem of possible drainage in Teapot Dome reserve with George Otis Smith, head of the Geological Survey. I knew that the Geological Survey had set apart the reserves, or picked them to be set apart and that it cooperated with the Navy Department during the agitation in connection with the leasing bill, for the protection of the reserves, had stood manfully by the Navy throughout in connection with the reserves. I thought it an undesirable thing to get the expert advice of Mr. Smith. I do not think he is competent. That is a strange thing to say of so eminent a geologist, but I do not happen to think that the realms of geology and the realm of mining are identical. The geologist is a very valuable man to the miner, but the Bureau of Mines was so eminently superior in the quality of service that it would render, when the actual mining conditions were
630 known, that I did not think there was any comparison between the value of the opinions of Dr. Bain and George Otis Smith. Now, of course, that is only personal, and it does not in the least decrease my estimate of Dr. George Otis Smith, for whom I have the highest personal regard and professional admiration. But I do not think it was a geologist's job.

Between November 30, 1921 and January 1, 1922, I had no reports rendered to me as to Teapot Dome except one oral report from Mr. Ambrose, some time in December, that the initial information that he had received, in some private letter, was unfavorable. I do not recall very much about that because I did not pay much attention to it. We were waiting to get hold of something definite. I did get hold of something definite in the latter days of January, 1922, at a conference in Secretary Fall's office in Washington, at which Fall, Bain, Ambrose were present. I cannot give you exactly the date of that conference, but I think it was about the 22nd of January. If you tell me that Secretary Fall was not in Washington on that date it could not have occurred then. Prior to the conference in late January Fall told me Doheny was not an applicant for a lease on Teapot Dome. Fall said Doheny didn't want it. I think he told me that in March, 1922, that Mr. Doheny had investigated and determined that he didn't want it. He didn't tell me Doheny had paid Mr. Creel $5,000 to try and get a [least] of Teapot Dome, nor

did he tell me Doheny had a contract with J. Leo Stack to get a lease of Teapot Dome. I don't know anything about that.

You know events moved rather quickly from the time that we had that conference in Secretary Fall's office, where it was determined to go ahead with No. 3. The next day Secretary Denby authorized the development of it. Secretary Fall did not to my recollection mention at the conference in January, 1922 that Mr. Sinclair was a candidate for a lease of Teapot Dome. I took the matter up with Secretary Denby at the first opportunity I had of seeing him, which was either the same day immediately after the conference at the Interior Department, or the next morning, one or the other.

I suppose the conference of late January with Secretary Fall and the others lasted an hour or maybe an hour and a half and then I went to the Secretary of the Navy and had a conference with him, which lasted I think half an hour.
631 Then the next day I reported to Secretary Fall that Secretary Denby believed that Naval Reserve No. 3 should be completely drilled up. I met Mr. Sinclair upon a subsequent date, three or four days later, in Secretary Fall's office. Fall told me that he had sent for him. I don't think I ever knew when Fall sent for him. I don't know how he sent for him or how he communicated with him. But within two or three days Mr. Sinclair and Mr. Zevely appeared in Secretary Fall's office. Secretary Fall said he sent for Mr. Sinclair to consider the conditions under which Teapot Dome would be opened. As to why he had picked out Mr. Sinclair, he said Sinclair was a big oil man and was the kind of a man from whom he would like to get a proposal, because he would be able to put it through. He told me to set forth to Mr. Sinclair in as much detail as possible, what we would need. There had been no discussion theretofore of what we would need except between Secretary Fall and me on the date of the conference late in the month of January when I told Fall that I would not consider any lease unless it included a pipe line. I came ultimately to that conclusion at that conference late in January when we were all of us taking and giving or exchanging information. I then set forth my ideas and told Fall that they depended upon the approval by the Secretary of the Navy. Before I laid out those terms I had received information at the conference from Dr. Bain and Mr. Ambrose who told me that the Wegemann report was confirmed and that there was grave danger of the property being seriously damaged by drainage and that fact as to the serious danger of damage from drainage to Reserve

No. 3 moved me in this conference to decide finally that we would lease the whole reserve,—that in connection with our experience with other reserves. I was foolish in not asking either Bain or Ambrose to give a written report on the subject. I don't remember any written report from either of those gentlemen,—yes, there was one made some months later, by Ambrose, but at that time there was no such report available that I know of. I was not familiar, that I recall, with the circumstances under which the report was later made by Ambrose. If my attention were drawn to the
632 report it might refresh my recollection. I read Ambrose's written report made February 18th. That did not move me to believe that immediate leasing was required. I had come to that conclusion before that time. I could not have considered Ambrose's report of February 18th at the time I reached my conclusion because I came to a conclusion before that report was rendered. I hope my mind is one open to conviction by evidence. When Ambrose's report was rendered I read it with care. It did not convince me that there was any immediate danger of drainage. I didn't know about Ambrose making it. I didn't ask him to make it. I didn't get it before I had decided. I was depending upon information I had already received. I don't think the information Ambrose gave me in January 1922 that there was serious danger of drainage was in direct contradiction to what he put in his report of February 18th. What Mr. Ambrose says in that report called in my mind for immediate action to forestall the 6 or 7 year possibility.

We had in the Navy Department at that time available for drilling a test well into the second wall creek sand at the saddle $500,000. It never occurred to me to drill a test well to find out whether we had to lease the whole reserve. I never realized that that was available for the purpose of drilling wells, because the drilling of wells by the Government was something that I well knew was contrary to the policy of the present Administration. I mean the Secretary of the Navy, Denby, would not have considered it for an instant and I never thought of putting it up to him, because it is foreign to my idea of good public policy. It had been suggested before, but that does not necessarily make it good public policy. I don't believe in drilling wells by the government. Drilling wells to save a reserve is a different story. Ambrose suggested that the reserve was safe if certain things were found by wells drilled in the saddle. I knew that if a well was drilled there we would know whether the reserve was subject to the drainage he mentioned in his report or whether it was

not subject to it provided he was right. I didn't have any information that he was wrong about it and I haven't any yet. Ambrose's report did nothing to change my previous determination that immediate action was required. I
633 do not say that the information Ambrose gave me late in January when I talked to him was different from the information he put into that report, except that his information on the date late in January was more precise and it was couched in language that appealed to my moderate intelligence a little more acutely. That information, as nearly as I can state it, was that there was great danger of serious drainage [or] Teapot Dome Reserve. That was the gist of his words. Prior to this day late in January Secretary Fall had said to me he didn't think that the leasing of this reserve could be done or should be done. He said that to me in October. I think that was the last conversation I had with him on the subject of a possible leasing of the reserve up to this date in January. I had some conversation with Ambrose about it in December. I was not familiar with the fact that Secretary Fall in the first few days of January, 1922, ordered an investigation of the placer mining claims on Teapot Dome. I didn't know that on January 12th he had gotten a [report] of those claims. I will say that at some time or other he told me that he had had those claims collected and [cabulated]. I think that was in March. I didn't know about anything of that kind in January I am quite sure. I did not know that there were any claims that were even presumed to be valid—I did not think there was any claim that was of any considerable importance in the Teapot Dome Reserve. I did not hear of them until after the time came for putting the whole thing into effect in the lease. I believed that the extinguishing of such claims would be valuable, when the point was brought up. Prior to December 31, 1921, Secretary Fall did not tell me that he had discussed the leasing of Teapot Dome with any oil men. I do not think that the first time I met him in January of 1922 he told me he had discussed the leasing of the Teapot Dome with any oil operator, but I am not sure that he did not. I am inclined to think that he told me that time that he had been in conference with Harry Sinclair down at his home in Three Rivers, and that the matter had come up, and that he had asked Sinclair's opinion on the matter. I think he told me that, but I cannot say that he did, so I am quite unable to say that he did not say that the matter had been discussed between himself and Mr. Sinclair.

634 On that day in January, Ambrose, Bain and I discussed the difficulties with regard to the exchange of oil for storage. At that time, or some other time we discussed the fact that Congress would undoubtedly make trouble if the matter were brought to its attention. I was quite cognizant of the fact that Congress would feel that it ought to be consulted about the disposition of those reserves; that is Congress, or some members of Congress rather. I know I was practically alone in insisting that if Congress had passed a law that [vave] us definite power we would be recreant in our trust, if it was wise for us to exercise that power, if we failed to do so. My view was to be both wise and silent.

Referring to a memorandum dated November 4, 1921, by C. S. Williams, who was Chief of the War Plans Section of the Navy, which reads as follows:

"There may be a certain amount of danger in giving too much publicity, because as soon as it is known what the character of the arrangements are, Congress will undoubtedly use these arrangements as a reason for cutting down appropriation for fuel and transportation. If this is done, of course the reserves which we so badly need and which we seek to establish, will not be established. Furthermore, it is conceivable that the whole project might be met with open hostility in certain quarters, because it operates to some extent to increase appropriations under fuel and transportation beyond what is set down in the Bill; and in another way it operates to create reserve fuel storage, the construction of which has not been specifically authorized by Congress. In view of the foregoing it would seem advisable to close the arrangements as soon as possible without undue publicity." That memorandum did not come to my notice in my bureau. That is my judgment, and was my judgment; but this memorandum, a secret memorandum from the Director of War Plans, addressed to the Chief of Naval Operations, seems to have considered the proposition, or a proposition that involved the use of some fuel for current Navy needs, because no other consideration could influence Congress, as you have just read, in cutting down appropriations for fuel and transportation. I have invariably opposed that policy. It was advocated, as I have told you, by many others, includ-
635 ing the Chief of Naval Operations, so late as the 30th of November, 1921, but I did not believe it.

The Navy has a file which deals with war plans, fuel stations and so on. Certain parts of it that are connected with

the preparation of plans for the accumulation of military reserves. A letter of that sort, addressed as it was, from the Director of War Plans to the Chief of Naval Operations, would not normally come within my knowledge, and I really doubt my having seen it. I do not recall it.

I know that it was within the province of Congress to establish fuel stations. That is in effect what Mr. Williams' memorandum points out. I decided not to go to Congress for authority to do that. The fuel stations to be established under the Pan American contract of April 25th, or under the Mammoth Oil Company contract of April 7th, were to be complete reserve fuel stations. They are what are known in appropriations as fuel depots. The question of the establishment of these fuel depots under these contracts was never submitted to Congress until the contracts had been entered into, nor ever approved by Congress through an act. I got the opinion of the Judge Advocate General of the Navy as to the legality of the establishment of these depots. By that I mean the reference to him referred to in my direct testimony. I never heard of any inquiry for the opinion of any attorney of the Navy Department, the Interior Department, or the Department of Justice on the question of the legality of the executive order of President Harding on May 31, 1921. I never made such inquiry. My department had come to the decision to exchange royalty oil from the California reserves for fuel oil in tanks to be supplied by the contractor on December 5, 1921.

In a letter dated 8th December I stated that our arrangements with the California Naval Reserve for the exchange of royalty oil for fuel oil in storage would take care of the Pacific situation—Pearl Harbor. I had in mind that some such provision ought to be made for the Atlantic Coast as well. The only available place from which we could get a supply for the Atlantic Coast was Teapot Dome, or the $500,000,— not that the $500,000 would take care of the Atlantic Coast reserve oil, but it would help and we subsequently did use it for the Atlantic situation.

636 I did not discuss with Secretary Fall, prior to January 1, 1922, how we were going to provide storage facilities for the Atlantic. I did discuss the Atlantic situation with him at the interview I had with him late in January, 1922, in general terms. I did say to him then that the lease of Teapot Dome would give similar advantages on the Atlantic Coast.

I cannot give you the date I first met Mr. Sinclair with certainty, but it was within a week of the 27th of January. It was prior to his letter of the 3rd of February, I think about four days prior. Secretary Fall was not present when I met Mr. Sinclair and outlined to him the things that would be necessary in any proposition for the lease of the Dome. Secretary Fall introduced me to Mr. Sinclair and withdrew and left me alone with Mr. Sinclair to set forth those things. Col. Zeveley was there, but I was the only representative of the Government present. I mentioned to Sinclair as essential the pipe line, provision for storage facilities and the filling of those storage facilities at various points on the Atlantic Coast, not particularized, but listed generally; the accomplishment of all the projects without charge to the Navy for the pipe line, which would not become our property, and with charge to us only in terms of royalty crude oil. Those are the prime details that I recall. I said nothing to him about outstanding claims. I had not heard of them at that time. I told him that I had come to the conclusion that drainage was present and that we had to protect ourselves. Nothing was said that I can recall about the length of the term of the lease. I told Sinclair that the matter had to be prosecuted with diligence; that I would have to have a large output of oil immediately so as to immediately stop the drainage. I think it was mentioned that the cost of pipe line would run well up into the millions, but I did not discuss that. I told Sinclair that the whole Dome would be leased to one operator; that in that way I conceived we would accomplish advantages to the operator that would be reflected to the government in increased royalties. I explained to him the advantages to the Government in having the oil in tanks at the seaboard rather than underground in Wyoming. I ex-
637 plained what I thought about it. Obviously, my opinion is only one opinion, and not the only opinion. Paragraph 1 of Mr. Sinclair's proposition says he will want a contract with the government by which he would be authorized to take out all the oil in the reserve without reference to the length of time it might require to accomplish that end, and the lease was made in accordance with that idea. I was not at that time familiar with leases made under the Leasing Act and didn't know that the Government's policy under the Leasing Act was not to grant leases for more than 20 years with renewal of ten years. I think that the man who puts an oil well down should control that well until the oil stops coming out, but I do not think that the twenty year, with the ten year renewal proposition is material, because I do not know

of any well that has produced after thirty years any considerable quantity. The discussion with Sinclair was preliminary. I informed him that we were going to expect more than the ordinary royalty, because of the advantages that would naturally accrue to the lessee who obtained such a large area for his exclusive exploitation. I gave him a chance to save money, a portion of which should undoubtedly revert to the advantage of the government. I knew at that time that the Teapot Dome was a very large proposition and had large potentialities as an oil reservoir and that it was believed that it contained an enormous amount of high grade oil. I knew that for years oil men were looking with covetous eyes on that field and I thought that in view of the circumstances very favorable terms ought to be secured for the development of it. As to whether I knew at that time or before the lease was executed that the Sinclair Consolidated Oil Corporation and the Standard Oil Company of Indiana were half and half owners of the Sinclair Pipe Line Company, I may say I am quite unaware of the ramifications of the various Sinclair companies. I did understand; I read in the newspapers, that there was an arrangement between some of the Sinclair companies, and I think the one that held oil in storage, and another one of the Sinclair companies, I think the one that operated the pipe line, by which fifty per cent interest, without control, was carried by the Standard Oil Company of Indiana. I knew at that time that Midwest Refining Company was
638 a subsidiary of the Standard Oil Company of Indiana. I did not know that the Sinclair Crude Oil Purchasing Company was in existence at that time. I did not know anything about the ramifications of those companies. I didn't make any investigation into the corporate or individual personality of the lessee at any time prior to the lease. I thought that I was dealing with Mr. H. F. Sinclair. When the contract was let it was not a question whether it was the Mammoth Oil Company or any other company of the Sinclair group, but I was dealing really with Harry F. Sinclair anyway. It was very material to me whether he had a community of interest with the Standard Oil Company of Indiana, or any other company or person. I thought it was absolutely necessary that we should not have a deal that would tie us up with the Standard Oil Company of Indiana. I relied in that respect upon the statements made to me by Mr. Fall, that this was an independent concern, and one of the largest. So far as that is concerned, that is the only investigation I made. Of course I knew that they were separate corporate entities, at least. I gave Secretary Fall's statement in that

respect perhaps more weight because of his statement of the reasons why we did not want to encourage the Midwest company in attempting to open up this particular field. Mr. Sinclair did not get from me or from my conference with him the matter in paragraph 7 of his proposition, dealing with the outstanding claims. I didn't know anything about it until I saw this letter.

Secretary Fall told me that he feared that on account of the question as to the legality of the bartering of royalty oil for storage, people would not bid for this contract and lease in California. At the time bids were received for the Pearl Harbor contract, which was allotted finally to the Pan American Company, counsel for the Standard Oil Company, or for one of the concerns, a Mr. Sutro, cited objections to the legality of the procedure that they were intending, and another concern refused to submit bids for reasons that I was told were restricted to questions as to the legality of the procedure.

I saw Mr. Sinclair's proposition of February 3 (Pl. Ex. 17) on February 4th or 5th. It was something over a
639 month thereafter that Secretary Fall and I decided that proposition was acceptable. To my knowledge the drafting of the lease was started in March, 1922. I cannot correct Mr. Ambrose's statement that on February 18th he was ordered to start to draft a lease and did draft for the next four to six weeks. I was in conference almost daily about the matter. From the time he began on it I was in conference, but I do not recall that was as early as February 18th. As I recollect it it was later than February 18th. He was doing the work. I doubt if the draft was completed about March 11th. It was executed by Secretary Denby on or about the 12th of April. The rough draft that I took to him was about—let's see—about the last of March, say the 30th of March, I think, and it took about a week, as I recall it, to straighten that matter out, get the necessary changes made in it before the final form was arrived at, which was within a day or two of the date that Secretary Fall signed it, namely, the 7th of April. It was not determined that Mr. Sinclair should have the lease until March as I recall it, somewhere around the 1st to the 10th. It was after Mr. Sinclair had tendered the quit claim deeds that the final contract for the lease was prepared, or was completed, so it must have been after the tenth of March that the lease reached its final form. I do not remember ever seeing those quit claim deeds. It is my recollection that Secretary Fall

and I determined that Mr. Sinclair should have a lease when we found out that his was the best offer that we could get and that was somewhere in the early part of March, between the 1st and 10th.

I discussed with Secretary Fall the question of getting competition on this thing. I said to him "It seems to me that if we would get competition we might get better action." He said he didn't think it was necessary, we had already gotten competition from everybody that could give us a satisfactory bid. At that time we had had it from the Texas Company. This was in March. I do not think I suggested competition immediately after the proposition of February 3rd. I don't know why I didn't. I did discuss it some time or other with Secretary Fall, but I don't think I did discuss it at that time. These negotiations continued with Sinclair about the details of this proposition. I allowed the
640 Interior Department to do the negotiating and bring the results to me. I do not think I suggested competition until some time in March, at which time Fall said he thought it not necessary, particularly as in his judgment we then had the best offer that we could get. I joined him in that opinion. If Mr. Beaty of the Texas Company saw Secretary Fall on the last Friday in March the original draft of the Sinclair contract was then done; and when I say "done" I mean it was done or about done. If Mr. Beaty did not see Secretary Fall until about the last day of March, 1922, there was not any chance to compete then. Of course if he had then put in a proposition which was superior to the one that we had gotten from Sinclair, it would have been accepted, but there wasn't much chance of any such thing being done.

It is not my business as an officer of the government to give the widest publicity to transactions by the government and get the best men to handle them. My business is to do the best I can for the Government. I do not feel as a public official that I am justified in making a private contract for a very large amount of property and territory of the United States without submitting it even to informal competition and I don't think I did that in this case because I was of the opinion, and am of the opinion, that efforts were made by negotiations to obtain from other than the Sinclairs as good an offer as we could get for that Teapot Dome. I base that opinion on the statements of Secretary Fall and nothing else. He told me that he had submitted the matter to Mr. Beaty. He gave me to understand that he had attempted to obtain propositions from various sources, and among others was the

Texas Company. Another that he strove to obtain a proposition from, according to his statement to me, was the Gulf Company; another was the Pan American Company. He stated these facts to me before the Navy Department, through me, had expressed an areement to go ahead with the contract with the Sinclair company before the termination of March 1922. In effect he said "I have endeavored to get a proposition from the Gulf Company and have been unable to do." I think the Gulf Company was the one he mentioned. He told me he had tried to get something from the Sinclairs, from the Pan American Company, from the Texas Company,
and from a fourth company, which company, I think
641 was the Gulf Company. I cannot make that statement any different, if I repeat it any number of times. He didn't tell me the Gulf Company had submitted a proposition. He told me they would not. He told me that the Pan American Company would not, that they did not want to; that Mr. Doheny had wanted to, but had made up his mind that it was entirely out of his field of operations and that he did not want to go into it. Now, I checked up on that statement, and it was verified to me by Mr. Doheny. He told me he had put it up to the Texas Company. He said that he had received no proposition from them at that time. I do not think he told me that he had put up the same proposition to the Texas Company that I had put up to Mr. Sinclair, but that is the inference that I drew from what he said. He didn't tel me he had some applications from other persons for leases. I do not remember ever having heard of Mr. Kistler. I have given you all the names I can recall. That is all I heard.

I told Mr. Sinclair when I met him that royalties were not to be taken in cash; that they could not pay them in cash without their going into the Treasury, and they would not be of any use to us. I think it would have been a better proposition to get our royalties in cash than to trade them for building for storage, but it would not have been legal. Congress had appropriated the oil, but they had not appropriated the cash and that was the question which was left to us to decide, whether we should—whether it was right, under the circumstances, of a genuine national need that we felt existed, to demand a new Act of Congress, or whether we should proceed under the Act of Congress that already existed. Now, my point of view always has been that when you give me power to do a certain particular thing for the benefit of the government, which I conceive that what you do for the benefit of the national security always is, it is my bounden duty

to do all that you give me power to do and not limit my endeavor to any narrower view of the authority which you give me, but to use as broad powers as I possess. I may be wrong in that; that is my belief; but I do not think I can be wrong in that.

On October 8, 1921, Secretary Denby expressed surprise at finding on his desk a letter prepared for his signature
642 by Commander Stuart. I explained to Secretary Denby that Commander Stuart was specially detailed to him on oil reserve matters. I thought he was familiar with the fact that Stuart had been preparing letters on that subject for him to sign ever since he had been in the office. Stuart did prepare all letters for the Secretary to sign. I will not say all, but some I think he did not. Secretary Denby told me he thought all these letters came to me for approval. Of course I knew that Stuart was consulting Denby right along on oil matters during that period and taking letters to him personally. After I was put in charge of oil matters I prepared the letters for Secretary Denby. I believe everything that came into him on the matter of oil went to my desk and if I didn't answer the letter over my own signature I prepared an answer for him and any letter that came into him on that subject would normally have been referred to me. I saw the letter and enclosure from Fall of April 12, 1922 (Pl. Ex. 8 and 8a). I took note of its contents and discussed it with Secretary Denby. I told him I did not think it was necessary, in view of the fact that we were going to get all of the bids that we were desirous of getting for the accomplishment of the Pearl Harbor job. I was relying on the statements secured by me from Mr. Doheny to that effect that we were going to get a bid. I thought Mr. Fall a pretty good business man and a pretty good lawyer also. I didn't think the suggestion contained in that letter that this was the most expensive way to do the thing was true. I disagreed with his business judgment in that respect. I was wrong in my statement to the effect that I told Secretary Denby to pay no attention to the letter but to wait, that we were going to get bids because on April 12th we then had all the bids. When I testified before the Senate Committee I stated I did not remember that letter at all and thought that I had never seen it. Since then I have looked at the letter in the original file and I found my initials on it, put there by myself, so I must have signed it. If you will look up in one corner, you will find "J. K. R." on it in the upper right hand corner. You will notice my initials on it there if you will look at it. I prepared the letter of October 25, 1921 (Pl. Ex. 5). I wrote the letter

of March 24, 1922 (Pl. Ex. 91). I did not in paragraph
643 (b) state the plan that we had for having tanks provided or naval reserve stations provided. In answer to the questions whether I anywhere stated in there that the royalty oils are to be used as a consideration for tanks, docks and other facilities, I say I do not expect that anyone would think they were going to get the storage free. There is no definite statement. I said in that letter in paragraph (c) "that the development of Naval Petroleum Reserve No. 3 is to be undertaken only to protect the Government against depletion of the reserve by other parties." That certainly on the 24th day of March, 1922, is not a full statement. When you ask me why I wanted to conceal from the committee what we were doing in Reserve No. 3, I reply—because I wanted to get the job done. By committee I mean the House Committee on Appropriations. As to why I failed to make the answer to Mr. Kelley full and complete,—there was an agreement between the Secretary of the Interior and the Secretary of the Navy that in matters dealing with the reserves publicity should come from the Interior Department. Because that is where they were being handled and that is the place from which the information originated. That agreement was in effect on March 24, 1922, and for several months prior thereto. We gave out no information that was original at that time. In that letter I gave out information that was not as complete as it might have been and in so doing I followed the agreement that information should be given out only by the Interior Department, because I gave out no information that had not already been made public. I didn't know what to do about it. I did have an interview with Mr. Kelley and I did explain to him the facts in full. I think I took this letter to him and delivered it to him in person, and at the same time explained to him what we were trying to bring about. This was on or about the 24th day of March, 1922, the date of the letter. I told Mr. Kelley at that time what our plans were, which included an exposition of the whole matter, one portion of which was the development of the Teapot Dome. I did tell him that negotiations were under way to lease the entire Teapot Dome. I did not tell him that it was to be leased to Mr. Sinclair or his nominee. In general terms I told him how far the negotiations had progressed. I mean that I gave
644 him a complete exposition of the reasons for our action and for the work that we were doing, and told him what we were trying to do. I told him that we were going to lease the whole reserve immediately.

It was the intention understood between Secretary Fall and me that no information should be given out which would state what was being done in full until after these contracts with the Pan American Company and the Mammoth Oil Company had been completed. It was the intention that the public and Congress should not get knowledge of what was being done until it had in fact been done. I think the agreement was made between Secretary Fall and me that information should not be given out until after this matter was entirely completed in October 1921, when we originally undertook the work. When I wrote that letter to Mr. Kelley the draft of the Sinclair contract was not completed. It was completed about a week after that. There was discussion between Secretary Fall and myself on the subject of the letting of these contracts without competition, not as to whether there would be consequent criticism or objections, but as to whether we could obtain, through negotiations, the best possible terms for the Government. That was the subject of our concern, my concern.

The telegraphic inquiry of the Inland Oil Index (Pl. Ex 92) and the reply signed by the Secretary of the Navy (Pl. Ex. 93) were handled by me and I signed the telegram in the name of the Secretary of the Navy.

"Q. You saw the Secretary Fall sign the Mammoth contract? A. No.

Q. You knew it was signed by him on April 7th?

A. It was on the 7th that we got the signed copy in Secretary Denby's office. I did not bring it from the Navy Department.

Q. On the 7th of April, then—

A. The next day.

Q. On the 7th of April, the day that you sent this telegram, you had seen the copy signed by Secretary Fall?

A. Yes sir.

Q. The same day?

645 A. Yes sir, thereafter.

Q. Was that a full and frank statement of the situation, Admiral? A. It certainly was not.

Q. Wasn't it intended to conceal the facts?

A. It was so far as the information for the public was concerned. It was all right.

Q. Was it correct?

A. It was exactly so.

Q. In other words, your telegram reads "Matters connected with the development of Naval Petroleum Reserves are being handed by the Secretary of the Interior?"

A. Yes sir.

Q. I got the tenor of your testimony yesterday to the effect that they were being handled throughout by you and Denby and that the Interior Department was carrying out the policies named by you and doing the things you asked them to do. Is that right?

A. Yes sir, that is right, but the work was being done entirely by the Secretary of the Interior, through his subordinates.

Q. In other words, as you told me a moment ago, when you smiled, this was technically correct, because technically the physical work was being done by the Interior Department? A. Yes sir.

Q. And that gave you opportunity to send a telegram saying that the work was being done by the Interior Department? A. Yes sir, precisely.

Q. And provided a way to evade a direct statement as to what the facts were? A. Precisely.

Q. Then you state "Navy Department has made no contract for development of Teapot Dome?

A. Yes sir.

Q. Now, you again take refuge in the fact that technically that was true?

646 A. No, I do not take refuge in that. I did not think that the Casper Oil Index or any other newspaper necessarily had any right to knowledge as to what was being done in the Department. I never yield all the information available to a newspaper just because they ask for it. They have no right to it. I did tell them a truth, but I did not tell them the full truth, nor had I any intent of doing so."

It was a matter of common knowledge that there had been numerous inquiries from operators in the Casper field to know whether the Teapot Dome would be opened for drilling. I had thought that large oil operators had been looking towards the opening of Teapot Dome in the hope that they might get a contract there, but on this date, April 7th, I knew they were not from information from Secretary Fall. But Fall was not the only source of my information. The only additional source of information that I had at that particular moment was the specific statement by Mr. Doheny that he wasn't going in there and did not want to go in there. That is the only thing in addition to Secretary Fall's information.

As regards Pl. Ex. 96, letter of April 17, 1922, addressed to me by Congressman N. J. Sinnott, that letter contains very

specific inquiries. The Teapot Dome lease was an accomplished fact at the date of that letter. Pl. Ex. 97 is my reply to Mr. Sinnott. In that reply I state "I am very sorry to say that I am unable to give satisfactory answers to several of your questions.", and go on stating about the Executive Order and say that the reserves are under the Department of the Interior since the Executive Order and since that date I am unable to give all the details of what has transpired, and then add "However, I submit what information that I
647 have, as follows:" then I give answers to questions nos. 1 and 2 and answer as to the withdrawal date and the total acreage in each reserve. Then I say, in answer to question 3 "Referring to question (3), et seq. of your letter, I am not able to give this information but it probably can be obtained from the Department of the Interior. Regretting that I am not able to supply more of the information desired, I am very sincerely yours". I could have answered other questions in that letter. I could have answered question No. 6; I could have answered question No. 7; I could have answered question No. 8. In No. 8 Mr. Sinnott asked "What lands, if any remain for lease or development contracts in Reserve No. 3, Wyoming?". There were not any left. It was because of my agreement with Secretary Fall regarding information that I did not give the information to Mr. Sinnott; this letter was the reason for the publication, by the Navy Department, I think it was the next day, of the entire contract with the Mammoth Oil Company. I took that up with the Secretary of the Navy and Secretary of the Interior and told them both in person that I thought that publicity should be given. I think it was Fall, at any rate it was the Interior Department; I think it was Judge Finney. If Fall was away it was Finney. I thought, when my attention was called to it just now, that it was Finney,—at any rate, I said that publicity should be given, that the matter had been accomplished and that was all there was to it. Secretary Denby felt the same thing and we proceeded in my office at once to make mimeograph copies of the contract for the lease of Teapot Dome and as soon as possible thereafter they were given distribtuion to whomsoever requested them. I gave Mr. Mondell a copy of it as soon as we got it. I do not know what date that was, but imagine it was about the 20th. It was as soon as I got the thing mimeographed. The mimeographing takes a little time. Another thing that affected considerably my reference of Mr. Sinnott's to the Interior Department, aside from our agreement, was that I was unable to furnish answers to some of the questions, to a part of

the questions included in the last paragraph of his letter, which are not set forth in detail, but which are there, things that required answers by the Bureau of Mines and the Interior Department.

I prepared the letter, Pl. Ex. 78, signed Edwin Denby
648 and addressed to Hon. Frank W. Mondell. It was in reply to Pl. Ex. 77, Mr. Mondell's letter to the Secretary of the Navy of the same date (April 15, 1922). Referring to the statement in the letter to Mondell, "In reply I can inform you that this matter is being handled by the Secretary of the Interior, in person. He has kept me informed as to the general plans, and I am able to assure you that they are not open to the objections included in the protest you have received, and that they are intended to accomplish definite improvements in the situation with respect to oil in the State of Wyoming." I think it was quite frank at the time to say that the Secretary of the Interior kept the Secretary of the Navy informed as to the general plans. I think that the statement was frank in view of the testimony I have already given. With reference to the statement in that letter (Pl. Ex. 78) "I should prefer, however, inasmuch as the entire matter has been handled by the Secretary of the Interior, that he give you all detailed information", I have this to say: the matter, as you know, included not merely the performance of the Navy work but certain facilities were included by the Secretary of the Interior and certain provisions were included in the contract by the Secretary of the Interior that advantaged the Government but that did not advantage the Navy. Some advantaged the Navy in a way that we could not obtain otherwise. Mr. Mondell came to me and I think he urged that it was the best policy that he and the public and his clients in Wyoming should know about this contract. I do not think that he insisted that they were entitled to know. I think that he urged that it was the best policy that publicity be given at once. He got a copy of the contract, I am not prepared to state the exact date; but when he came to my office he was shown the contract, whatever date it was. I am prepared to state he was shown the contract prior to Aril 25th. I believe it was the 17th. When I say copy I mean the original in the Navy Department's files.

I didn't see the memorandum for the press dated April 6, 1922 (Pl. Ex. 70-A) when it was prepared. I saw it when it was issued. I think I did not speak to Secretary Fall about its terms. It does seem to me to contain little information.

Referring to its language about "some rumored con-
649 tract for the development of the oil in what is known as the Teapot Dome," there was not any doubt on April 6th as to what the contract was to be. This memorandum is in the nature of preparatory information; that is a sort of notice that is usually given when you have some news you are going to give out pretty soon. It was not then the intention to give out any news about the Sinclair contract for the Teapot Dome. That is contrary to the plan. Information regarding the plan was to be given only when the plans developed into entities. I think that memorandum did give indication that the steel tank storage was to be paid for by royalty crude oil; it does not so state but I think it so indicates.

Referring to the memorandum dated April 13, 1922 (Pl. Ex. 7-B) I do not remember ever seeing that memorandum. My attention is called to the fact that in the letter dated April 12, 1922 from Secretary Fall to Secretary Denby, Secretary Fall says "I am also handing you a copy of a memorandum which I have made for the government of my staff in giving out information concerning these contracts." I do not remember ever having seen the memorandum of April 13. If that memorandum was the one enclosed in the letter of Secretary Fall I will have seen it at the time. I saw the memorandum for the press dated April 18, 1922. (Pl. Ex. 62). I think I saw that before it was given out and approved the terms in which it was couched. I think that memorandum is a partial result of the policy for immediate publicity which I have said was due to Sinnott's letter of April 17, 1922 (Pl. Ex. 96). That is not the whole of it. As to why the publicity was not complete at that time I may say the Secretary of the Navy had requested the Secretary of the Interior, at my instance, to retain certain portions of the contract and leases as secret, those portions being the locality and the quantity of fuel oil to be stored. The Secretary of the Interior stated to me his misunderstanding of that request as covering a larger field than was intended. All we desired to keep from publicity was the military part of it, the plans for the national defense part; we did not desire that anyone should know how much we were going to store at any one
place. That is all that we did not desire to give com-
650 plete publicity to. The Secretary of the Interior told me that he had misunderstood the Navy's request after Sinnott's letter. This was in April. If the Secretary was not in Washington in April it must have been after he came

back. If it was not Secretary Fall it was Acting Secretary Finney. I do not differentiate too closely between them. It was the Interior Department to me. I know that I talked to Dr. Bain about it. I know I talked to Secretary Denby about it. I talked to the head of the Interior Department on the 18th or 19th of April and that must have been Judge Finney. About the 18th or 19th of April the decks had been cleared for information as to the Mammoth contract and the talk was that we did not desire to keep it secret any longer except one thing. There was one part of it where it refers to the storage places or amount of storage. It does not refer to amount as I recall it, it refers to places of exchange, deliveries for exchange. The only places that are referred to are on page 31 of the printed copy of the Bill of Complaint, which are the places of delivery of fuel oil, ports of the United States where the oil can be delivered. Not all of them are places where storage was intended to be had and they are not referred to as places of storage. That entire contract could have been given complete publicity without giving away any military things of any kind and I so stated to the Interior Department and to Secretary Denby on April 18th, 19th or 20th. I received the letter of April 20, 1922, from Congressman James McClintick (Pl. Ex. 98). Referring to the reply to that letter of April 27th, 1922 (Pl. Ex. 99), that reply was prepared by my assistant. I could not have been at the Bureau on that date when the letter was signed by the Acting Chief of the Bureau, my principal assistant, Capt. Tompkins. I am not sure where I was. I may have been in Newport, R. I., delivering an address at the War College. I may have been in New York inspecting a ship. I may have been in Washington, but not at the Department. I do not know that I have ever seen that letter of April 22d before. I must have. I must have seen it some time after it was sent. In that letter Mr. McClintic asked me a number of questions about leases and contract for development in the naval reserves since March 4, 1921,
651 but the Pan American contract did not involve any lease and I would therefore be of the opinion that in answering a query like this it would not be necessary to make any statement about the Pan American contract. I am not familiar with the fact that Mr. McClintic then made injuiry of the Interior Department.

The letter of April 14, 1922, by Senator J. W. Harreld to Secretary Denby (Pl. Ex. 79) was turned over to me for my attention. I do not remember whether I wrote the reply of

Secretary Denby to that letter, dated April 20, 1922 (Pl. Ex. 80). It is a fact that these matters were handled by me, and that a letter from the Secretary of the Navy should have been prepared by me or vised by me at least, prior to submission to the Secretary but I do not recall this letter. It would be probable that I wrote that letter, but I do not remember it. I cannot think of any place that Secretary Denby would get such information as appears in the indented portion of that letter relative to certain leases except through my office. In reply to the question Q. Now, was that a frank reply to Senator Harreld, the witness' answer was A. It was certainly quite incomplete. Senator Harreld's question was not susceptible of any misunderstanding, as it seems to me today, and there is not any question that on April 20th the Mammoth lease and a number of other leases in naval reserves had been executed other than those mentioned in this letter in answer to Senator Harreld. I do not think I would have written that letter and that is why I feel grave doubts. Although all such letters were handled by me I have grave doubt that that particular letter came over my personal desk. I do not think I ever saw it before. It was sent. It is true that that letter was not giving complete information on the 20th day of April with regard to the facts; and that was contrary to the policy that Secretary Denby had agreed to with me before the 20th of April, so I cannot conceive my preparing that letter nor can I conceive Secretary Denby's preparing it, he having agreed to the policy. I question the accuracy of the date of that letter, although it is all right and may have been dated that way.

Looking at the letter of Congressman McClintic to Secretary Fall, dated April 27, 1922 (Pl. Ex. 100) and
652 Judge Finney's reply to Mr. McClintic, dated May 2, 1922 (Pl. Ex. 101) I observe that after the Navy's reply to McClintic he followed the Navy's suggestion and wrote to the Interior Department. I do not think the Interior Department consulted me with reference to a reply. The reply dated May 2nd and is subsequent to the agreement that publicity should be made. Referring to Judge Finney's reply of May 2nd, so far as the specific questions asked are concerned it would seem that Judge Finney showed the conditions reasonably well. Judge Finney's answer appears to give satisfactory reply to Mr. McClintic's request to him for information, with one exception, that it does not state the leases that

have been made since March 4, 1921. It does state the total leases. If the figures opposite the line "Leases by the Government" in Judge Finney's enclosure were supplemented by the words "since March 4, 1921" the answer would be a complete answer to Mr. McClintic's request. I find in Judge Finney's answer to McClintic a statement of the number of acres in the Sinclair contract. Opposite "Leases in Naval Reserve No. 3, Wyoming" he has the figure "9321." The word Sinclair does not appear in Judge Finney's enclosure or in his letter. I don't know how the Congressman was to find out whether it was the Sinclair contract to which the above figures referred. That was the only contract that was made in Naval Reserve No. 3, but this letter does not show that. Neither the Navy Department's letter signed by Tomkins (Pl. Ex. 99) nor Judge Finney's (Pl. Ex. 101) shows that.

The letter signed by Judge Finney, Acting Secretary of the Interior and Secretary Denby to the President of the Senate, dated April 21, 1922 (Pl. Ex. 63) was prepared in the Interior Department. I went over it before Secretary Denby signed it and it is my recollection that some changes or amplifications were included as a result of my revision. The matter was given careful scrutiny by me before the letter went off. I think it is true that that letter is the first letter referring to the contracts and leases on Naval Reserves that states that the contract provides for a line of credit under which, in exchange for the crude oil, ample storage for the fuel oil is to be provided without cash outlay by the Government. I don't know of any other prior letter setting
653 forth that fact and that letter makes that statement in respect to the Mammoth contract. The letter from Secretary Denby to Senator LaFollette dated April 29, 1922 (Def. Ex. O) was, as I recollect, prepared for Secretary Denby by the Judge Advocate General, Admiral Latimer, but I saw it before the Secretary signed it and approved it. It refers entirely to a matter with which I had no connection.

I told Commander Stuart of the execution of the Mammoth lease at the time it was executed. I did not tell Commander Shafroth. It is my recollection I first told Stuart of it within a few days prior to its execution by either Secretary Fall or Secretary Denby, but I am not quite sure that it was not during the interim between the date between which Secretary Denby and Secretary Fall affixed their signatures.

I am familiar with the fact that there is in Washington an office known as the Public Records Office, or some such name,

and I have been informed that under the laws of Congress contracts made by the Departments must there be recorded. I do not know when the Mammoth lease and the Pan American contract were sent to that office for recording. It was in connection with the sending of these contracts to that office that I first knew of the existence of such office. I had a conversation that gave me that information but I don't know with whom or when. I don't remember any conversation with anybody about holding the contracts from public record. I know that the question of withholding them from public record was one that would be justified solely by national necessity, or at least, I think it would be, under the law as I was made aware of it. There was nothing in the original Mammoth lease, Exhibit B of the Bill, which could not properly be known to the public. There was no military reason of any kind that I know of why that should be kept from public information. The main thing, from the point of view of the Navy, is, so far as possible, to keep the public and foreign governments from knowing just where fuel reserve oil is stored and just how much is stored at a particular place. So far as this particular question of publicity of the Mammoth lease is concerned that is a correct statement. As far as fuel oil is concerned, this is the important precaution, not so important that they should not know where it is stored as that they should not know where we are planning to store it. Entities are not secrets. We cannot very well build a tank 40 or 50 feet high, on a flat piece of ground, near an open harbor like Honolulu and expect human beings will not see that tank. Of course we cannot expect that intelligent human being won't know what the tank is for. We are not willing that the public should know about the tankage immediately it is contracted for. Once the tank is there I am perfectly willing anybody should know it is there. I say this because the difference in time between the formulation of a plan and the execution of it is just the advantage that preparation gives.

654

To my knowledge Secretary Denby never sat in any conference with representatives of the Mammoth Oil Company in connection with this contract. I think I would have known if he had. I do not think Secretary Denby ever saw them, because it was my recollection that when the second contract, or supplemental agreement and contract was entered into, that I introduced some representative of the Mammoth Oil Company to Secretary Denby, who had not therefore known them. I was not present when any conference

took place between Secretary Denby and Secretary Fall between October 25, 1921 and May 1, 1922, touching the Mammoth Company contract.

Referring to the letter of Secretary Fall to Secretary Denby of April 12, 1922, and its enclosures, being a memorandum as to the Mammoth Oil Company lease (Pl. Ex. E and 7A), I never saw that letter until after it was received by Secretary Denby. It was usual, in order to expedite communications between the two Secretaries, that letters from the Interior Department on the subject of petroleum reserves for the Secretary of the Navy were addressed to the Secretary of the Navy and were enclosed in an envelope addressed to me. This expedited delivery. I repeat that I don't identify anything save the letter and this particular memorandum relating to the general terms of the Mammoth Oil Company contract. I don't recall the other memorandum stated as enclosed in the letter (Pl. Ex. 7-B). I do not recall the memorandum governing the conduct of the employees of the Interior Department. I do not think that was received by Secretary Denby with this letter. I do not know why
655 it was necessary that Secretary Denby should have a digest of the contract. He knew it in great detail. It was at this time understood that publicity should be given by the Interior Department and this memorandum covered that publicity as I understood. I would hesitate to ascribe a motive to the language of Secretary Fall in that letter (Pl. Ex. 7), which language is as follows: "I have instructed my office force to give out nothing of the details of any of these contracts, and to retain in a secure place the original contract with the deeds, etc., attached. This for the reason that it has been customary to file all contracts with the general files, where by inadvertence they might be subject to examination by parties not entitled to see them." There is no doubt about the motive expressed in the last paragraph, where Secretary Fall says "I am particularly anxious that no details should be given out pending the final agreements upon the contracts for the construction of reservoir facilities in Hawaii." Secretary Fall's motive as reported to me by him was not that he was afraid if the Mammoth contract were given out there might be something come up to stop the Pan American contract going through. What he told me actuated that particular paragraph was that he wanted to report in full as one achievement what he regarded as a great achievement for the benefit of the public. As to when he did report that great achievement in full, that is a different

question and I am not competent to answer it. I was one of those here in Washington and to my knowledge the public did get this great achievement, got these details, when we made the report that is included in Senate Document 210; in other words, on June 3, 1922, after the Senate had demanded the information. I think we had done a great public service in putting through these contracts. It is not the way we do it in the Navy, through pride of accomplishment, when the contracts were closed to give that accomplishment in the fullest detail.

I wrote the letter to Congressman W. N. Rogers, dated December 20, 1923 (Pl. Ex. 151).

Letter Robison to Rogers (Pl. Ex. 151) offered.

656 20 Dec. 1923.

My dear Congressman:

Your letter of 4 December, addressed to the Bureau of Supplies and Accounts, has been referred to the Bureau for reply.

There is no proposed fuel oil station for the Navy Yard, at Portsmouth, N. H., though there have recently been erected at that place storage facilities for certain amounts of reserve fuel oil and other petroleum products. These products constitute a war reserve only, to be used only when a national emergency exists, and are entirely separate from petroleum products issued for current use. The fuel oil and storage facilities therefor are being paid for by royalty oil from the Naval Petroleum Reserve No. 3 (Wyoming) in which defensive drilling is being done in accordance with a contract dated 7 April 1922 between the Government and the Mammoth Oil Company. The facilities are costing the Government no cash whatever.

Very respectfully

J. K. ROBINSON
Engineer in Chief U. S. N.
Chief of Bureau.

Hon. W. N. Rogers,
U. S. House of Representatives,
Washington, D. C.

That was intended by me as a frank statement of the situation to Congressman Rogers.

Referring to a memorandum which I wrote about November, 1923, the language of that memorandum expressed my views; that is about right, that is referring solely to Teapot Dome. The language of the memorandum is as follows; "Complete protection of the reserve against draining demanded a large number of wells. Adequate pipe line transportation facilities demanded a regular supply that might require a greater number of wells than necessary solely immediately for offsetting purposes." That is about right if you add after the word "solely" the word "immediately", so that it will read "solely and immediately". But I don't think that is all contradictory of the letter that I wrote to Representative Rogers. The memorandum (Pl. Ex. 152 infra) shown me is probably a correct transcription of
657 a dictated memorandum made by me at or about the 1st of May, 1922. It was never revised by me or put in smooth form, nor was it intended by me to be other than an aid to my memory. It was not in fact given out to anyone with my knowledge and consent.

Memorandum headed Memorandum dictated by Rear Admiral J. K. Robinson, May 2, 1922, 4 p. m. (Pl. Ex. 152) offered.

Navy Department's Connection With Fuel Oil Reserves.

Reserves were created, first by order of the Secretary of the Interior, 27th of September, 1909; second, by act of Congress (36 Stat. 847), approved th of June, 1910.

After the withdrawal of the naval reserves from entry or lease and through several years of litigation over private claims, naval reserves Nos. 1 and 2 were practically destroyed by the drilling of private parties on adjacent lands. Development of the reserve lands was necessary to preserve any equity in the matter.

On May 31, 1921, in response to a request made originally by the present Secretary of the Navy, and afterwards concurred in by the Secretary of the Interior, the President assigned the latter officer to take executive charge of naval petroleum reserves, subject to conference and agreement with the Secretary of the Navy on all questions of policy.

On the 25th of October, 1921, the general policy was set forth by the Navy Department. This was concurred in by the Secretary of the Interior on the 30th of October, 1921. One of the items of policy agreed upon at this time was 'that the development of naval petroleum reserve No. 3 is not to

be undertaken except to protect the government against the depletion of the reserve by other parties.'

The Secretary of the interior, at the request of the Secretary of the Navy, has entered into a contract, to which the Secretary of the Navy is a party, with the Pan American Petroleum Co., for conversion, storage, and exchange of all royalty oils accruing to the Navy reserves Nos. 1 and 2 (California), and for the purpose of transforming these royalty oils to above-ground storage, located in the instance of the contract awaiting completion, at Pearl Harbor, T. H.

658 The amount to be stored in this locality by the present contract is 1,500,000 barrels. It is anticipated that it will take from three to four years for the contract to be entirely accomplished and paid for by accruing royalty oils.

On information from the Secretary of the Interior, that the petroleum reserve No. 3 was menaced by depletion by means similiar to those which so unfortunately reduced the Government areas in California reserves, contract was entered into to protect the interests of the United States in naval reserve No. 3.

Arrangements for entering into the details of this contract were submitted to the Navy Department for consideration prior to the execution of the contract, although the Secretary of the Navy, himself, is a party to this contract with the Secretary of the Interior for the United States Government. The lessor (lessee) is the Mammoth Oil Co., H. F. Sinclair, President. The intent of the contract of the Mammoth Oil Co., is to provide for the preservation of the Government's interests in the oil in the so-called Teapot Dome naval reserve.

Contract provides for drilling offset wells against wells on adjoining property and for the construction of a pipe line for the drilling of wells to furnish a capacity of 20,000 barrels per day or more, and ultimately for the full development of the leased lands for the production of oil and gas, and for the maintenance of wells in a producing condition as long as they can be made to pay.

This contract also provides for a graduated scale of royalties which scale is satisfactory to the Navy Department. The contract provides for the exchange of royalty oil from the Teapot Dome, upon the basis of the highest posted market price in the Salt Creek field, Wyoming, or in the mid-continent field. The details of exchange of royalty for fuel

oil or petroleum supplies, are included in the contract. These details are believed to be advantageous to the Government, inasmuch as under conditions such as have obtained for some years in the past, this contract would secure to the Government a favorable differential of about 5 per cent.

659 The contract provides for the delivery to the Government at its will, at a large number of points on the east and Gulf coasts of the United States, all petroleum products.

The contract further provides that the lessor (Lessee) shall construct and shall pay for, from royalty oil proceeds, storage facilities, in which shall be stored, for the use of the Navy Department fuel oil; the above facilities and storages to be located at such points and in such quantity and in accordance with such plans and specifications as may be set forth by the Navy Department.

On the whole, therefore, this contract with the Mammoth Oil Co., protects the Teapot Dome reserve against the drainage into the Salt Creek Field, that has been reported to exist through the so-called second Wall Creek sand.

It further provides for the conversion of the royalty oil in Wyoming into a useful naval product, as such points and in such quantities as the Navy desires. It provides for the conversion of a reserve that has been held underground, but which is believed to be in process of depletion through producing wells, into an actual reserve, stored where required by the Government in such quantities of fuel oil as a liberal royalty will pay for.

This contract is believed to be entirely to the advantage of the Government. Incidentally, it secures to the small producers in Wyoming rights that they have not heretofore enjoyed, by requiring a pipe line to be constructed by the lessor (lessee).

The word "lessor" is used in that memorandum but should be "lessee". Referring to the 9th paragraph which starts off "The contract provides" it was my understanding of the Mammoth Oil Company contract that it provided for drilling of offset wells. It did so provide but it provided for the complete drilling of the property. Offset wells as I understand the term are wells close to the line to offset wells of neighbors on the other side of the line. A lease to drill an entire section, an entire area, might properly be termed

an offset lease, but the wells would not all be offset wells in the technical sense.

660 It was clear to me during the negotiations and conferences with the Interior Department and during the drafting of the lease that the administration and the discretion touching the administration of the contract was wholly left with the Secretary of the Interior as a subordinate to the Secretary of the Navy. That was what I understood the thing was to lead up to. I read the lease with care and explained my reading of it to Secretary Denby. I gave Secretary Denby to understand that that lease left the power in the Navy and the mere details with the Interior Department. Secretary Fall stated to me that was the purpose of the lease and that is the way it has worked out. I acquainted Secretary Denby with the terms of the lease in detail the same as I had with the Pan American contract. I do not understand that under these contracts Secretary Fall was entirely within his rights if he refused to have any officer of the Navy supervise any part either of the administration of that lease as an oil lease or any part of the construction. It may be that that contingency was not directly covered in the terms of the lease, nor do I think that it was; but as a matter of fact, though no such provision appears in the lease itself, it was well understood that the construction of the facilities should be entirely in accordance with our plans and specifications and requirements and that a naval officer, namely, the Chief of the Bureau of Yards and Docks, should be assigned to attend to that work.

I would consider it an important matter that the lessee in the Mammoth Oil Company lease should have the right to assign the contract. I do not remember whether I called Secretary Denby's attention specifically to the fact that the question whether the Mammoth Oil Company should be allowed to assign the contract rested solely in the Secretary of the Interior but it was discussed. That was the fact. It was determined to leave that matter solely with the Secretary of the Interior. I do not think the Secretary of the Interior might approve an assignment to Tom, Dick or Harry and that the Navy could only beg and pray him not to do so, but had no power of veto, because I think the assignment had to be to responsible parties. I judged that from the general tenor of the contract. The only provision I can find on that subject is in Article 10 of the contract.

661 There is no limit to the right of the Secretary of the Interior to agree to an assignment set forth in Article 10, nor in any other portion of the lease specif-

ically, but there are set forth in the lease general terms under which the matter shall be prosecuted. I point to that portion of the lease preceding Article 1—you understand I am not competent to enter into a controversy as to the legal terms of this or any other lease; but it was my opinion, and is my opinion, that in the preamble of the lease where the consideration desired is set forth, the intent of the lease contract is made evident. It states "Securing and storing a supply of fuel oil for Navy purposes; acquiring suitable storage for such fuel oil at points easily accessible; avoiding so far as possible any risks of loss of supply of crude oil; creating a competitive market; securing the best prices obtainable; securing adequate storage facilities". I would say that phrases of that sort, to my mind, limited directly the power of the parties in the execution of the contract. It may be that that is not a legal point of view. I do not know, but it always seemed so to me. I was no more of a lawyer in March and April 1922 than I am now. As to what lawyer I consulted as to the terms of this contract, I may say I depended on the Interior Department for the legality of the contract, and I knew that Mr. Denby was a lawyer. The possible assignment of this contract was discussed with Mr. Denby. I told him that I thought the general position of the Secretary of the Interior regarding the Naval reserve property at all times was that of a subordinate to himself; let me state it more accurately. I was of the opinion that the position of the Secretary of the Interior was controllable, that the actions of the Secretary of the Interior were controllable by the Secretary of the Navy so far as naval petroleum reserve matters were concerned, except, of course, those particular matters specifically given to the Secretary of the Interior by the law. That is practically the entire discussion of the assignment feature of the contract which I had with Secretary Denby. I did not submit these contracts to any law officer of the Navy or to any law officer of the Department of Justice. I inquired whether they had been submitted to any law officer of the Department of the Interior and Secretary Fall stated that he thought he
662 knew more law than anybody he had in the department; that he hoped to make the laws under which the matter was being handled. There was no question of the fact that he occupied one of the most important positions in the government and I trusted him. I do not think that his power was unrestricted under Article 10. I do not think I brought to Secretary Denby's attention the fact that this contract could be terminated by consent of Secretary

Fall because that paragraph in the contract referring to termination was, I thought, of little importance, and was intended, as I understood it, to provide for the time when the oil lands would become dry. As a matter of fact the idea that the contract might be terminated if it turned out to be an unfavorable contract to Sinclair and he desired to terminate it never came in my mind or that of the Secretary of the Navy so far as I know. The power of termination is in Article 5 reserved to the Secretary of the Interior solely without reference to anyone else and that would make it possible had a man been so disposed towards the Government to play ducks and drakes with the government's rights. That matter was never discussed between Denby and me. I never asked any advice on the question for I never thought of it. I explained to Secretary Denby that Secretary Fall, under the lease alone had the right to place the value on gas and casing head gasoline; but that was explained that that was the only way we could get the value fixed. I could have provided "subject to the consent of the Secretary of the Navy" but I didn't; on the contrary I left that matter entirely in the hands of Secretary Fall and I think wisely. To the question whether it was explained to Secretary Denby that the certificates that were to be issued were not to be interest bearing I would say no and yes at the same time. The matter of interest was discussed, and it was determined that the issuance without interest charge would work out probably to the advantage of the Government, because, for at least a considerable portion of the term of the contract, we would be owing them money. The Government would be owing them money provided it could persuade them to do construction work or order them to do construction work in advance of oil having ran sufficiently to pay for it.

663 Only the Secretary of the Interior had the right under the contract to call on them. I could not force him to call on them. I thought and they thought in all these matters the Secretary of the Navy could do so. I do not find any provision to the effect in the contract, but the contract does not set forth at all the relations between the Secretary of the Navy and the Secretary of the Interior, unless perhaps in the signature of the contract. My recollection was that Secretary Fall signed not only as Secretary of the Interior but he also ascribed himself "and for the Secretary of the Navy." That does not appear in the record, but I think that was the fact. It was not explained to Secretary Denby that if the Secretary of the Interior did not notify the lessee of the election of the government to

take cash, or petroleum products or construction, that these certificates might stand for years without bearing interest and leave the proceeds of the lease in the hands of the Mammoth Oil Company, because we had definite plans as to what we were going to do. If we could have secured no degree of cooperation from the Interior Department we would have been in trouble, but I didn't count on any complete breakdown of any department of the government.

I do not remember that I explained in connection with the contract of February 9, 1923 (Exhibit C to the Bill of Complaint) that the Bureau of Mines was made the sole arbiter under articles 3 and 4 of the original contract of April 7, 1922. I do not recall that that contract so provides. This is a matter of importance beyond a doubt, but the questions as to the places of drilling and the measurements of the oil and gas and casing head gasoline were naturally things that would be handled directly by the Bureau of Mines and should be. The statement of our rights as to helium, in Article 4, I think can just as well be handled there as anywhere else. We referred constantly in our department to the contracts as contracts of the Interior Department. I mean the Teapot Dome contract. In dealing with these matters the Navy always did act in the posture of one requesting the department that had the power to do this, that or the other thing, to do such thing. I was familiar with that attitude towards the contract that he Navy did not have rights, but had the right to request things, but that the deciding power was with the Interior Department; ex-
664 cept this, that as between Government departments, orders are never issued; they are almost invariably couched in the form of an official request. I cannot point out any provision in the original lease which imposes a discretion or power to act or not to act where that discretion or power is not specifically in the Interior Department alone. I called that fact to Secretary Denby's attention. He was not only cognizant of it when he executed the lease but desirious of it.

I was familiar with the act of Congress of August 25, 1914 (38 Stat. 708) that if royalty oil be sold the money should go into a fund which in the discretion of Congress would be appropriated for the needs of the Navy as Congress saw fit. I was familiar with the Act of February 25, 1920, known as the Leasing Act. I was familiar with the fact that under that act the proceeds from royalty oil were to be put into the Treasury of the United States as mis-

cellaneous receipts. My study of the situation therefore showed me that if naval reserve oils were sold the Navy could not, without the consent of Congress, get the money which would be realized therefrom. I discussed that fact with Mr. Denby, with Mr. Fall and with Mr. Sinclair. The intent of my remarks to all of them was that in order to prevent the money going into the Treasury, a plan must be worked out whereby royalty oil should be given as a consideration for the storage of fuel oil in tanks, and the building of naval depots therefor. It was always the intention of the Navy Department and of the Interior Department, when the contracts were being discussed, and being made, to use all of the oil certificates under this Mammoth Oil contract for fuel and other petroleum products in tanks to be built and to constitute naval fuel reserve depots.

Referring to my memorandum of May 11, 1922, which is a memorandum I made for the Secretary of the Navy on the subject of oil certificates, and referring to paragraph 7 of that memorandum in which I say "7. No royalty oil has yet accrued through drilling in Naval Reserve No. 3 but when such occurs, it is to be used toward construction and filling of further tankage as a reserve for future use by the Navy and at such points on the Gulf and Atlantic
665 Coast as designated by the Navy Department in fulfillment of the requirements of the National Defense." I will state, it was the full intent as expressed by paragraph 7 of that memorandum, that all royalty oil accruing from No. 3 reserve should be used in exchange for fuel oil to be placed in tanks to be constructed as part of the naval reserve depots at various points, and that royalty oil should be used as consideration for all of those things.

Referring to the Atlantic Ocean and Gulf stations under the Navy's war plans, and meaning thereby construction facilities alone, as distinguished from the oil that was to be filled into the storage facilities, I should say that at least $25,000,000 would be a fair figure of the approximate cost; that on the Pacific for construction as distinguished from oil to be filled into the tanks would be somewhat less, perhaps $15,000,000. For the whole project on both coasts, including the oil and petroleum products that were to be put into the stations when constructed, the plans provided for a cost of a little in excess of $100,000,000, based upon the prices current for fuel oil at the time the estimate was made.

I discussed with Secretary Fall the financial responsibility of the Mammoth Oil Company. He said he had perhaps the biggest independent capital obtainable when he got the Sinclair interest engaged on the work. As to how I knew I had the Sinclair interest when I got the Mammoth Oil Company, I have already stated that the differentiation I made between H. F. Sinclair and the various oil concerns with which he was connected was nothing. I did not know any difference among them. We got a proposition from H. F. Sinclair February 3rd. I always thought that I had dealt with the equivalent of the Sinclair Consolidated Oil Company. It must have been in March I first learned that the lease was to be under the name of a concern called Mammoth Oil Company. I asked Mr. Fall what the Mammoth Oil Company was and he told me that it was just a method of Mr. Sinclair's to handle the proposition. That was the substance of his reply. Fall did not tell me what the capitalization of the Mammoth Company was. I think he did state it was a new corporation organized for this purpose. I suppose I understood that
6551 the corporation had only such responsibility as its capital indicated. I presume it would be true that if the Mammoth Company had been organized with a capital of but a few thousand dollars, the Government might have had a very unsatisfactory tenant. I do not know that the only asset the Mammoth Oil Company had after organization and the taking of this lease, was the lease. As a matter of fact the only thing that interested me was that H. F. Sinclair was going to put this transaction through. He was the man we were dealing with. I didn't know how he guaranteed the transaction. I thought that he was the Mammoth Oil Company. Perhaps he could only be the Mammoth Oil Company as a stockholder. I know that if a man is a stockholder in a corporation he subscribes to the stock and when he subscribes to the stock I think he is done. I didn't find out how much Mr. Sinclair had subscribed to the stock of the Mammoth Oil Company, nor how much working capital it had, nor whether it was anything but a mere shell. I asked Mr. Fall about these subjects and he told me that the real thing in the proposition was that H. F. Sinclair was running it and the thing that was of importance to us was that we had him and his interests involved. My recollection is that there is a personal guarantee here somewhere from Mr. Sinclair. I think he gave his personal bond in the sum of $250,000. In naval matters or governmental matters it is not ordinarily customary to take the bond of the party that the government is dealing with without security; but there are times when it

is advantageous and this was supposed to be one of those times. I do not remember why, but there was a specific advantage that we would get from that; there was some specific improvement in the terms of the contract that were obtained for that reason. As a matter of fact I would rather have his personal bond than that of any bonding company, because I felt that it tied up his honor in the proposition. I do not remember that there was also a surety bond taken. I didn't pay any attention to that feature. As to what I recall discussing with Secretary Denby on the question of bonding, I think I made mention to him of the improvement that had been brought about in the terms of the contract through the personal bond given by Mr. Sinclair.

667 Referring to what I had in mind with regard to the naval reserves and drainage when the leases of the reserves were in contemplation, I had in mind the report of M. L. Requa made in 1916, or thereabouts, which was in my office. I do not know whether Secretary Fall ever saw it or not. I do not remember that after the leases were made Mr. Requa wrote Secretary Fall calling his attention to this report and that Secretary Fall made a hurried call on me for that report and I got it from my files and sent it to him. I do identify Secretary Fall's letter of May 20th, to me on the subject.

Letter, Fall to Robison, May 20, 1922. (Pl. Ex. 154) offered.

The Secretary of the Interior

Washington

May 20, 1922.

My dear Admiral:—

I am herewith handing you copy of letter of Mr. M. L. Requa, to which I referred this morning.

You will note that Mr. Requa's former report was made to Lieut. Commander Landis.

You will further note that Mr. Requa took a copy of this memorandum personally to Secretary Daniels and requested him to read it.

I think this report is very important, if it can be found upon your files, and if not I will wire Mr. Requa requesting him to either furnish me with a copy or to hold himself in readiness to come here upon notice.

Very respectfully,

ALBERT B. FALL.

I also identify my reply to that letter.

Letter, Robison to Fall, May 22, 1922. (Pl. Ex. 155r offered.

"22 May, 1922.

My dear Mr. Secretary:

In compliance with the request contained in your letter of 20 May, 1922, I take pleasure in handing you herewith a true copy of the report on file in the Navy Department, in connection with the drainage of Naval Petroleum Reserves Nos. 1 and 2, which was submitted by Mr. Mark L. Requa to Lieutenant Commander I. F. Landis, U. S. N., under date of 16 December 1916.

Respectfully,

J. K. ROBISON,
Engineer in Chief, U. S. N.,
Chief of Bureau.

Hon. Albert B. Fall,
Secretary of the Interior,
Washington, D. C.
Enc."

I sent a similar letter to Judge Finney.

Referring to the minutes of the Navy Council, dated December 6, 1921, which inter alia read as follows, "Admiral Robison stated that the Judge Advocate General had given an opinion on various points raised on the oil question
668 to the effect that these propositions were legal and that the immediate need is appropriation for these tanks at Pearl Harbor. Asked permission to request Secretary of the Interior to enter into contract be referred to Navy Department before execution for consideration, and so forth, the Secretary said he wanted the details from the Secretary of the Interior before he took it up with the Appropriations Committee," I should think the reference to an appriations committee in that minute would be to either the House or the Senate Committee on Appropriations of Congress. As a matter of fact the question was not taken up with either of the appropriations committee at or about that time. Secretary Denby and I had about the time of that meeting of the Navy Council (December 8, 1921) discussed considerably whether the matter should be taken up with either appropriations committee and the decision was that it should not. I have no knowledge that from October 1922 to January 1923 the Navy Department requested of either

appropriations committee of House or Senate any appropriation for the building of fuel oil storage tanks. While such a request would come from another bureau, I would certainly know of it.

Between October 1921 and late April 1922 I got a good deal of information from Commander Stuart as to the past performance and current matters. I did not ask his judgment or advice relative to any of these contracts. Referring to the letter of October 25, 1921, some of the ideas as to policy were obtained from Commander Stuart directly. He saw that letter before it was sent. In my memorandum of November 1923 I say, "This letter referring to the letter of October 25, 1921, Pl. Ex. 50 was dictated by me and incorporated therein such approved ideas as I had been able to obtain from Commander Stuart as well as from other sources, such as the Bureau of Mines." That statement is correct. Certain of the paragraphs of that letter were in accordance with Stuart's ideas; certain of them are different from what Stuart would have thought at that time. Some of them embodied certain advances in policies which Stuart regarded as of questionable propriety. So that in a sense Stuart's ideas were approved and incorporated in that letter. It was not because Stuart held the ideas that they were put in this letter. Where they were so incorporated, it was because
629 Stuart's idea was cleared by me and approved by Secretary Denby.

I did say to Secretary Denby that there was grave risk to all of our reputations in the handling of this oil matter. By that statement I meant that you could not touch oil without getting contaminated. It does not make any difference how you do it. I felt there was grave danger that what I did would be thought not to have been [done] correctly. I knew that what we were working on there known.

I don't remember that I asked for an opinion of the Judge Advocate General as to whether the half million dollars appropriated under the act of June 4, 1920 was available for dredging at naval reserve stations, but I was responsible for that opinion being asked.

I wrote the letter of March 23, 1922.

Letter, Robinson to Bureau of Yards and Docks, 4Pl. Ex. 136) offered.

"2nd Ind.

23 Mar 1922

614646-653 3-F

From: Bureau of Engineering

To: Naval Bureau of Docks

Subject: Naval Fuel Oil Storage—Canal Zone.

1. Returned. While the appropriation under which this storage is to be erected is not available for dredging, in view of the advice that is contained in the first indorsement, it is believed that the work of erecting a 55,000 barrel tank at Coco Solo should be proceeded with as soon as possible on account of the fact that the appropriation is not available after 30 June, 1922. It is the understanding that the question of dredging the approach channel will be taken up at a later date and will be accomplished by using funds other than those available for the erection of the tank.

J. K. ROBISON
Chief of Bureau.

I got the information set forth in that letter from the general correspondence. I do not think that it would be wise to use some of the $700,000 appropriation for dredging the approach to the reserve station at Coco Solo. I thought it would be improper. I thought it was not included within the terms of the law. I didn't consider the Act of June 4, 1920, to enable to Navy to swap royalty oil for dredging. The Navy didn't swap royalty oil for dredging at Pearl Harbor. The distinction that I made was this, that we were not swapping royalty oil for dredging. That is exactly 670 the reason that I disapproved the use of any of the $700,000 for dredging at Coco Solo. The idea to have the dredging done at Coco Solo to improve the approaches to the existing fuel station there was advanced by the Chief of the Bureau of Yards and Docks, Admiral Gregory. I said I thought there was grave question as to the propriety and legality of that action; that while it was proper to do the dredging that was necessary in connection with the construction of the reserve station at some point, it did not seem to me that it was at all proper for us to do dredging and dredging alone. I do not know whether I made a distinction that was a correct one, but it was a proper one to my mind. In other words according to my judgment if I had been asked

to use the $500,000 to build a new tank and dredge the approaches to that tank at a new place where a new tank was needed. I think I would have approved it, the distinction being that that would not have been used for dredging up to a tank that already existed. The use was authorized for the necessary facility directly connected with the storage of oil, but not for the improvement of an existing supposedly adequate facility. That is not a lawyer's opinion, but that was my opinion.

I have stated my attention was called to the fact that Mr. Beaty of the Texas Company had presented a proposition and I called that matter to Secretary Denby's attention. All that I can now recall of Beaty's proposition is that it was an inferior proposition to the one we had, less advantageous to the government. I know it did not provide the various things that we called necessary, such as pipe lines, construction and filling of storage facilities along the Atlantic Coast, without the exchange of crude oil at any time into cash. Those were the three primary features necessary. One part of it is that I was told by Secretary Fall that Mr. Beaty had made a proposition to pay royalties for the Teapot Dome lease which were not as large as the royalties that Sinclair had agreed to pay. I was shown Mr. Beaty's telegram or letter. I do not remember what the details of it were, as reported by Secretary Fall, except this,—that I do know that he was not willing to undertake all the things that we wanted, nor did his proposition involve anything like so advantageous
671 terms as those included in the pending contract with Mr. Sinclair. I do not know what his proposition involved except that I saw the telegram or letter to Secretary Fall and that telegram or letter did not completely cover the stipulation to do all the things I wanted done. I do not know that Secretary Fall told me he had asked Mr. Beaty to meet the same conditions that Mr. Sinclair had been asked to meet. He did tell me that it was his opinion that it was impossible to get anything like as favorable terms from Mr. Beaty as we were sure to get from Mr. Sinclair. The idea was really this. We had, by negotiations with Mr. Sinclair, obtained terms that were satisfactory we were obtaining a contract that was satisfactory to us, which seemed adequately to protect the Government's interests. It seemed to do an unusual number of things or an unusual character of things, and I was perfectly satisfied that it was the best thing that we could do.

I do not recall seeing Secretary Fall sign the Mammoth lease. I did see Secretary Denby sign it from three days to

a week after Secretary Fall signed it I should say. Denby signed three copies I think. The Navy kept one, sent one to the Interior and one went to the Mammoth Company. As I recall the Mammoth Company's execution was upon the paper when Denby signed it. I am sure there was no change in the lease in any respect after Secretary Fall signed it. There was some question as to whether or not it was necessary that Secretary Denby should sign it, and it was determined that it was desirable that he sign it, whether necessary or not. I think that was determined before Secretary Fall signed it, but I am not sure as to that.

The lease, when executed by Secretary Fall on or about April 7th, I think I took to Secretary Denby myself.

I began my study of the records of the Navy Department touching the naval oil reserves as mentioned in my direct testimony on October 8, 1921, and finished it about the middle of March of this year (1924) when the matters were again taken directly into the office of the Secretary of the Navy. Stuart brought the Wegemann report to me. I was not informed that Wegemann was an employee at that time of the
672 Midwest Oil Company, although he may have been. I knew he was no longer connected with the Government and was with some private concern. I did not know what that concern that was. Then, or thereafter, I knew the Midwest Oil Company was a candidate for a lease of Teapot Dome. I knew Wegemann was a geologist, but that was not one of the reasons I gave so little credence to his report. I set great store by geologist's reports but I do not think they have much value after mining operations begin. For instance, at the time Teapot Dome was set aside, when the development of Salt Creek was small comparatively, the Teapot Dome reserve had its area delimited, and I think properly, by geologists. After it was opened the question of drainage of Teapot Dome into Salt Creek was one that became acute as a result of actual mining operations in the Salt Creek region, and the geologist's opinion no longer was of the tithe of the value of the opinion of the mining engineer in my opinion. Dr. Bain gave me an opinion on this subject, but in basing my decision on his opinion I did not look into his oil experience. I did not know that he had no oil experience before he came with the Government. I knew he was Director of the Bureau of Mines in the Interior Department and Chief Technical Mining Expert of the country. I conceived him, and do conceive him to be the best possible authority that I have access to. He was the head of a Bureau

that has a lot of brains in it, whether he has got them himself or not. As to Mr. Ambrose I may say, as a matter of fact, Mr. Ambrose appears to me to be almost too young a man to be a really eminent authority and I have always thought so. I do not know whether Secretary Fall called the conference held late in January. I used to see Secretary Fall very frequently, sometimes at my instance and sometimes at his. It may be that I was the instigator of that particular meeting. Some other item may have been considered; so I cannot say as to that definitely. As I stated in my direct testimony, those present at that conference were Secretary Fall, Dr. Bain, Mr. Ambrose and myself and no others that I can recall. Mr. Safford may have been in for a moment and the others may not have been present during the entire interview. At that time the question of the Pan American
673 contract was decidedly pressing. I think probably the Pan American Contract was discussed at that time in view of the recent return of Dr. Bain from the California coast. I think Dr. Bain brought up the question of Teapot Dome. He said, in effect, in substance, that the reports from the field were that the drainage of Teapot Dome was existing and that serious drainage was dangerously probable. Ambrose echoed his remark. Secretary Fall said, "What are you going to do about it?" And I said "I certainly am not going to repeat the disaster that we had in California. We have got to develop Teapot Dome." I then made known to Secretary Fall, in answer to his question, what seemed to me to be the basic requirements for the development. I also stated we had to refer it to Secretary Denby before any such action would be authorized. I referred the matter to Secretary Denby either that afternoon or the next morning and brought the answer immediately to Secretary Fall, the decision of the Secretary of the Navy. The considerations that moved me to try immediately to lease the entire Teapot Dome were as follows: First there was the experience we had had in California, where in my opinion we had suffered the loss of several millions of dollars by failing, by delaying too long in putting down offset wells; second, there was what I regarded as a pressing national emergency regarding our state of security; third, and in connection only with the use of the word "entire", the leasing of the entire Teapot Dome, there was a conviction in my mind that by handling it as one matter we could make better terms than we could make if we handled it as a series of small affairs; that it would involve much less cost to us and much less trouble to the Government and would produce better terms. Further I was of the

opinion that to do it in that way would be the only way in which we could secure the big capital expenditures that would be required on the part of the contractor to accomplish some of the, perhaps, over-ambitious ideas that I had. Those considerations were the major ones that actuated me. If they were not the only ones, they are the only ones that I now recall. They were all potent in reaching that decision. As to whether I would have decided that the Dome ought to have been leased immediately if there had been no national emergency I may say national emergencies are mat-
674 ters of definition, they are also matters of law, I suppose, but to me there is a genuine national emergency unless we have a defense that is adequate at this time to protect us against any combination of foreign powers. It was greatly accentuated of course by the Japanese situation; but to me there was a general national need that was, at this time, made grave, that is all. I therefore did not take time to examine the question of drainage as I might have done had there been no emergency in the matter. In other words, with information that the drainage situation was threatening, with the knowledge I had of a genuine emergency, I decided to take no time to consider the drainage separately but go on with the proposition and take no chance with the national security. That is exactly the basis of my decision and I so told Secretary Fall. Prior to the time, however, that I became aware of the probability of drainage in Teapot Dome, I do not think that we were justified in opening up that reserve, but it took a combination of circumstances to justify our action as a whole.

I have no knowledge of any prior reports written on the Teapot Dome or any contemporary reports relative to its condition other than the Wegemann report and the Heald report, none prior to the conference in January except one. I was, as has been indicated by some of the testimony, on terms of personal friendship with young Doheny. I knew the father, E. L. Doheny, a successful oil man. I had asked him what the circumstances were with regard to the security of our Wyoming reserve and he said that Salt Creek was in a bad way but he thought that our Teapot Dome reserve was pretty safe. That is not a matter of record there, and it is contrary to the reports that I had received elsewhere. There were no other actual current reports with which I was familiar. Mr. Fall called for some reports from Mr. Tough or others. I do not think he waited until after the policy had been adopted. I think the reports were called for prior to that time. After the lease was consummated, between the

time that the order to Tough was given and the time this report was received, it is my recollection that an unofficial opinion was expressed, in a private letter, and also expressed in conversation with Ambrose which indicated that Tough was inclined to agree with Wegemann in the matter of dan-
675 ger of drainage. I never had Tough's report; I never saw it.

Redirect Examination.

Referring to my cross-examination where I was asked questions concerning the contract of April 7 and the fact that the oil certificates therein mentioned did not bear interest, turning to the contract, Exhibit B of the Bill, at page 29 of the printed bill, which reads "The lessee agrees, if and when requested so to do by the lessor, to construct or to pay the cost of construction of steel storage tankage up to but not in excess of such an amount as shall be estimated to be necessary or required for the storage by the lessor of the fuel oil to be received by it as hereinbefore provided in exchange for royalty crude oil from the lands hereby leased; said storage to be constructed as and when the same shall become necessary or shall be required for the storage of such fuel oil so delivered by the lessee or its nominee, and said storage to be located at points designated by the lessor; the cost of such tankage to be liquidated by lessor by delivering to the lessee or its nominee crude oil certificates hereinbefore referred to, said certificates so delivered to be of the face amount in value equal to the cost of such tankage for which the lessee or its nominee shall have paid or become liable" it was intended when the lease was drawn that the request to the Mammoth Oil Company to do construction work should be delivered to the oil company through the Secretary of the Interior. It was not my understanding that that contract when I was discussing it with Secretary Denby that the request for construction could only be made through the Secretary of the Interior, but we had no intention of doing it otherwise. I did not understand the contract to provide that the only person who had the right to request construction work was the Secretary of the Interior. The contract does not provide that the Secretary of the Interior give instructions; it provides that the Government give the instructions; but it was the intention of Secretary Denby, as expressed to me, that all communications under this contract with the Mammoth Oil Company should be made through the Interior Department. That was our intention at the time.

That intention is not required by the terms of the con-
676 tract, of course, but that was our definite intention at that time. It was my understanding when I was conferring about the contract with Secretary Denby that the Navy Department could order this construction work done through the Interior Department. The Government did actually elect to have this construction provided as it was given the election to do under the April 7th contract. The method used in exercising the government's option was, it called upon the Mammoth Oil Company to proceed with the construction of storage facilities at Portsmouth, N. H. I have no personal knowledge of a written communication on that subject addressed to the Mammoth Oil Company. There was a written communication addressed to the Interior Department, asking them to call upon the Mammoth Oil Company for the construction of this storage. How the Interior Department proceeded to bring that about I do not recall. I did not write the letter.

Referring to Article 8 of the supplemental agreement of February 9, 1923, appearing on page 52 of the printed copy of the Bill of Complaint, it is my understanding that when that agreement of February 9, 1923, was entered into this provision exercised the election which the Government had under the contract of April 7, 1922, and that no further notice was necessary to the Mammoth Oil Company as to any construction up to such time as that company should complete the projects set forth in the supplemental agreement. After that time as set forth in Article 8 of the supplemental agreement, notice would have to be given to the Mammoth Oil Company once more of which option the government desired to exercise. The contract of February 9, 1923 covered the whole program of construction that the Navy had at that time, but up to the time everything was completed the Government had the right to put in something else if subsequent needs had developed. Our rights wre not restricted in that respect at all. I mean that under the provisions of the agreement of April 7, 1922, the lessor had the right to give notice as to any further construction. That right was in the lessor; and was not confined to the Secretary of the Interior. The right at all times lay, as I interpreted the original contract, as well as the supplemental agreement, primarily with the Secretary of the Navy; and the Secretary of the Interior throughout, under my understanding of all the contracts, acted as an agent of the Secretary of the Navy.

677 Referring to my cross-examination on the subject of the right to elect whether the government should be paid by the lessee in cash or storage and whether the options which the government had under the contract of Apri 7, 1922 could only be exercised if the Navy could get the Secretary of the Interior to exercise them, I call attention to the agreement of April 7, 1922 where it provides how the certificates may be redeemed and that the option in each instance is given to the lessor. It was not my understanding that that provision of the contract cofined the exercise of that option to what the Navy might get the Secretary of the Interior to do. It was my undertsanding that that option was to be exercised solely by the Secretary of the Navy.

Referring to the matter of interest I remember certain testimony that I gave on that subject in my cross-examination, where I was asked by counsel for the Government whether under the provisions of the contract as to interest the certificates might not remain without bearing interest for years if the Secretary of the Interior wanted to play ducks and drakes. Having in mind the terms of the contract on that subject which gave the option to the lessor, without nominating any agent to act for it, it was not my understanding of the contract that the United States could only exercise that option through the Secretary of the Interior. I understood that the option could be exercised only by the Secretary of the Navy. It was, however, our intention to take action through the Secretary of the Interior.

My attention has been called to Article IV of the supplemental agreement of February 9, 1923, on the subject of interest. That was a modification made by the United States in pursuance of the rights given to it under the original agreement of April 7, 1922, and that modification settled the question of interest insofar as it might be a matter of concern during the life of the February 9, 1923 agreement. The original question on the subject of interest I took to be directed to the original lease and contract with the Mammoth Oil Company. This supplemental contract with the Mammoth Oil Company put into effect an interest rate of five per cent on balances, monthly balances, and the last seemed to us to be fair and to protect the Government against the con-
678 tingencies of accumulated oil certificates and to be fair to the company in compensating them for any large advance payments in the form of construction for the government account in excess of current royalty. That provision was not unilateral.

Referring to my cross-examination where I said that I could not point out any provision in the original lease that imposed a discretion or power to act or not to act where that discretion or power is not specifically vested in the Department of the Interior alone I call attention to a provision in the contract of April 7, 1922, as follows: "Provided, however, that if at any time after the completion of all the test wells of the first series and of the second series and at least fifty per cent (50%) of the test wells of the third series hereinbefore mentioned, the lessor shall so request, the lessee shall make a concurrent test for sixty (60) days of all of the wells producing oil in paying quantities at such time", and so forth; and I direct your attention particularly to the term "lessor". I understood that meant that so far as the terms of the contract go the Secretary of the Interior was not the lessor. So far as the terms of the contract go that is one instance where discretionary power was not lodged in the Secretary of the Interior. I am speaking now of the terms of the contract and my understanding of them at the time I called the contract to the attention of Secretary Denby, and as I spoke of them in cross-examination. It was our intention and expectation that the determination of facts by the Secretary of the Interior, through his representatives, should determine the action that we would take under the provisions of this option; so that, although the contract does not provide that the Secretary of the Interior exercise this option, we expected that the decisions of the Secretary of the Interior would, in this respect, determine the action that would be taken. The point is that the Secretary of the Interior was not the only man under the contract who had the power. Regarding the provisions of the contract which give the government the option to call on the lessee to furnish construction of steel storage, the power that is given there is given to the lessor and the right to give or not to give is another instance when the power is not confined to the Secretary of the Interior. This is a case where we expected
679 to determine the Government's action in connection with its option in the Navy Department. Regarding that portion of the lease of April 7, 1922, where the option is given to accept payment in cash or storage of other petroleum products, I may say that is another instance where we expected the Secretary of the Navy to determine the action of the Government. Another instance of the same sort is the clause referring to the redemption of certificates in fuel oil; the option is given to the lessor and not confined to the Secretary of the Interior. Another instance where the discre-

tion or power is not confined to the Secretary of the Interior is that provision of the lease of April 7, 1922, giving the right to lessor to fix the rate and basis of exchange in the future contract for fuel oil of a different quality than that provided for in the lease.

Referring to my cross-examination where I stated that Secretary Fall said to me that he sent for Mr. Sinclair to consider the conditions under which Teapot Dome could be opened, I meant by my statement that Sinclair was sent for to consider the conditions that we insisted upon in order that Teapot Dome should be opened to development, that is the Navy's requirements as set forth in my cross-examination.

In my cross-examination I said that I was foolish in that I did not ask Ambrose and Bain to give me a written report on the subject discussed at the meeting in the latter part of January 1922. By that statement I meant that I was unsuspicious, that I had at that time no reason that I know of to be suspicious to any degree of anybody with whom I had been in contact with this business. Since that time I have come to realize that in a matter of big business, such as this was, you are foolish if you do not have a record of every step you take and of every word that anybody says and of what anybody does. I wish I had it in this case.

In my cross-examination I was asked whether Ambrose in his report of February 18, 1922 (Pl. Ex. 23) suggested that the reserve was safe if certain things were found by wells drilled in the saddle. Referring to Ambrose's written report, the paragraph starting "In conclusion, it is believed
that if oil is found in the saddle in the second Wall
680 Creek sand the leases which have been granted along
the northern zigzag boundary, separating the two structures will result in drainage of this sand in the Teapot Dome during the next six or seven years to a point on the south section line of Section 28, Township 39 North, Range 78 West, and if conditions are favorable the productivity of the same will be affected even farther to the south." I desire to say that of course the direct language of the report was under certain circumstances, namely, if there is oil in the saddle, Teapot Dome is leaking oil dangerously. Now, it did not say that if there was water in the saddle Teapot Dome was safe, but I understood that to be the implication of the report. So I understood the report to mean that if certain things were found it would not be safe and by implication my statement in cross-examination is cor-

rect; although not directly included I think it is implied in Mr. Ambrose's report; I mean that Ambrose implied inferentially that if water were in the saddle it would be safe.

In my cross-examination I stated that it did occur to me to go to Congress for authority to establish fuel stations, but that I decided not to go to Congress. The reason why I decided not to go to Congress was that in the first place, the Secretary of the Navy approved my idea tentatively to build up, through the use of royalty oil, the war reserves at the naval stations; later, in council, he determined that he would not do it, because of doubt as to its legality. Then the Judge Advocate General's opinion, asked for by me, was approved by him, and he ordered me to go ahead. His doubts had been resolved. I never had any. I think, I feel, that it is my duty, when confronted with a need, if given by Congress one way that I can accomplish that, to take advantage of that one way, and not to ask them for any other ways. I did not think at that time that we could have obtained from Congress the authority that we desired without long discussion and much publicity which, at the time, I think, would have been unfortunate in an international sense; and I did not think it was right for me to fail to go ahead, and that is why I did not do it.

Referring to my testimony as to the length of time that was taken to decide to accept the offer made by Mr. Sinclair, Secretary Fall and myself decided that the offer was acceptable, but the determination to accept it was made by
681 Secretary Denby of course. Mr. Denby did not discuss it as acceptable until after it was recommended to him by me for acceptance. It was a matter of discussion up to the time that I finally recommended to Secretary Denby to accept it.

Referring to my cross-examination relative to Mr. Beaty of the Texas Company, I have before me the telegrams of April 4th, 5th, 6th, 1922 (Pl. Ex. 35, 36, 37). The telegram of April 4 (Pl. Ex. 35) is not the telegram I referred to in my cross-examination. I do not recall having seen it. I saw the telegram dated April 5th (Pl. Ex. 36) addressed to Fall and signed by Beaty. I did not see the telegram of April 5th (Pl. Ex. 37) signed Fall, Secretary. As to the telegram of April 6, 1922 (Pl. Ex. 38) signed by Beaty, I cannot say whether I saw it or not. Some parts of it I do not recall at all and other parts I seem to have seen. As to the telegram of April 5th, which I saw (Pl. Ex. 36) I was shown that I

think almost immediately upon its receipt. My conference with Secretary Fall in which he told me he had received some proposition from the Texas Company must have been only 3 or 4 days prior to the date of that telegram. It was finally determined that the offer of Mr. Sinclair would be accepted after we got that telegram from Beaty that indicated that he was not going to give us what we wanted, I am pretty sure, but the final determination was made by Mr. Denby, and he is the only man that can positively give you an answer to that question. I was in intimate conference with him and reported to him that the Sinclair bid was a satisfactory bid and the best bid that we were able to obtain before he made his decision, and that must have been only a day or two piror to the 7th of April. That might have been prior to the receipt of this telegram and after the original conference between Mr. Beaty and Secretary Fall. It was after we had the general terms of some offer from the Texas Company. I gave the general terms to Secretary Denby before he decided; I know that, but the terms were never definite. All I got out of the Beaty offer, the terms of the Beaty offer, is the recollection that their royalties were somewhat lower than we had developed with the Sinclair people; that the pipe line was not going to be put in, nor would they bind themselves for the construction of storage facilities. Their terms of
682 exchange of fuel oil were, I think, fully as good as those offered by the Sinclair people, but in every other respect their terms were inferior. Now that is my recollection of something that I never saw in writing. Secretary Denby told us before we got that information to go ahead and prepare a contract, but his final decision was after that.

I said in my cross-examination that if the Texas Company had them put in a proposition which was superior to the one we had gotten from Sinclair it would have been accepted, but there was not much chance of any such thing being done. By that expression I meant we felt at that time that we had made some pretty good terms and incorporated them into the tentative contract with the Sinclairs, terms that gave us better than normal royalties, that gave us some rather extraordinary facilities, and that involved the necessity of utilizing, in an indirect way, it is true, the entire Sinclair organization, marketing, and so forth, and I did not think that better terms would be arranged. The terms that we had gotten down to were satisfactory, they met our needs, and gave us, we thought, I thought more than we could get from anybody else, that is all. I did not think there was a chance that any-

one else would do as well by us as had been done by us by the Sinclairs, if they should have the contract.

In my cross-examination I stated that as a business man I thought it was a better proposition to get royalties in cash than to trade them for building storage, but that it would not have been legal to do so. By that I meant that after we transformed the royalty into cash we could not thereafter legally use any of that cash. The cash had to go into the Treasury miscellaneous receipts and could only be gotten out by appropriation; so that unless we could accomplish this business as a whole, including the provision of the fuel reservoirs at our naval stations, without the transformation of the royalty into another form than a means of exchange between the royalty itself, and the finished fuel depots, I think are the words you used, we had no legal right, and this was one way that I know of that we could do what we felt the nation needed, so we did it.

683 Referring to my cross-examination as to the examination of the contracts by Secretary Denby and myself I may say that we went over the Pan American contract longer and more frequently than we did over the Mammoth contract and I suppose we went over the Pan American contract more carefully to familiarize ourselves with its terms. The Pan American was the first contract that we had under consideration and it took us longer to work out the terms of it.

Referring to that portion of my cross-examination relative to the execution of the April 7, 1922 contract, I may say that the contract was signed late in the day of the 7th, and it was signed after the telegram to the Inland Oil Index (Pl. Ex. 93) went out, but I do not think this is material. I have stated that I made some inquiry into the financial responsibility of the Mammoth Oil Company and that in making the contract I relied more upon the personal integrity and responsibility of Mr. Sinclair than upon any of the company's. I stated my recollection was Mr. Sinclair had personally guaranteed the contract in writing.

I have before me Pl. Ex. 26. That is the personal guarantee to which I refer and I saw that.

684 Defendants offered in evidence letter, Denby to La Follette, dated April 29, 1922 (Defendants' Exhibit 69). Said letter was as follows:

"The Secretary of the Navy
Washington

April 29, 1922

My dear Senator:

Replying to your letter of April 22 wherein you request me to send you a copy of the legal opinion upon which the transfer of the naval petroleum reserves to the Department of the Interior is based, I regret that I am unable to comply as I have no record of a formal legal opinion on this question.

The Act of Congress approved June 4, 1920, relates to those portions of the naval reserves not included in pending claims, patents, or leases, and authorizes the Secretary of the Navy to conserve, develop, use, and operate the same directly or by contract, lease or otherwise." This vests broad discretion in the Secretary of the Navy as to the method, the manner, and the extent to be utilized in the conservation, development, use, and operation of such lands. He may do it directly or by contract, by lease, or otherwise."

In view of the fact that these naval reserves are surrounded by public lands, the oil and gas deposits of which are under direct administration of the Department of the Interior, of the fact that the adjacent lands, and other records of title are in the General Land Office, the technical data in the Geological Survey, and the organization and machinery for supervising the drilling and production of wells in the Bureau of Mines all of the Department of the Interior, it was believed that that method of administration of the naval fuel reserves was in the best interests of the Government.

Attention is invited to the fact that the Executive order of 31 May, 1911, provides:

"The administration and conservation of all oil and gas bearing lands in naval petroleum reserves No. 1 and 2, California, and naval petroleum reserve No. 3, in Wyoming, and naval shale reserves in Colorado and Utah are hereby committed to the Secretary of the Interior subject to the supervision of the President, but no general policy as to drilling or reserving the lands located in a naval reserve shall be changed or adopted except upon consultation and in accordance with the Secretary or Acting Secretary of the Navy."

By this order, control of the naval reserves is not removed from the cognizance of the Secretary of the Navy, but the details of administration are to be carried out by the Department of the Interior, as such can be more satisfactorily done

by that department. The Secretary of the Navy signs and is a party to such contracts as those recently entered into for the development (for the Navy's benefit) of Reserve No. 3 in Wyoming and the contract for exchange and storage of royalty oil from reserves Nos. 1 and 2 in California. In matters referring to naval reserves the Secretary of the Interior acts in behalf of the Secretary of the Navy.

685 Trusting that this supplies the information which you desire, I remain,

Sincerely yours,

EDWIN DENBY.

Hon. Robert M. LaFollette,
United States Senate."

Recross Examination.

The letter of March 11, 1922 (Pl. Ex. 26) just referred to, was shown me at or about the time Sinclair gave it. I never saw the quit claim deeds. I was informed, however, that Secretary Fall had succeeded, at his own instance, in securing as a condition precedent to the execution of the contract, the surrender of all claims against the Navy's ownership of Teapot Dome. He didn't tell me where he got them. When I say that I mean I don't remember that he told me. He told me nothing about the consideration that had been paid for them. I did not know that until perhaps a year later.

Referring to my testimony that I am not sure whether I saw the telegram from Beaty of April 6, 1922 (Pl. Ex. 38) I said that Secretary Fall said to me that Mr. Beaty, on April 6th, had telegraphed him that he meant Navy specifi-
686 cation Bunker A in connection with the lease proposition, being willing to go that far in order to obtain a lease on royalty basis and other terms outlined, or to be agreed upon. Secretary Fall did not tell me that Beaty was still willing to discuss the terms of a lease. The only thing I can recall in connection with that telegram is information to this effect: "I believe that my tentative proposition, though contemplating Naval specifications Bunker A, was too liberal, and it is withdrawn." That is the part I can recall and that is all I can recall. I did not take this to mean that the above quoted statement from that telegram referred to one of two propositions namely, the leasing of the Teapot and the purchasing of the Salt Creek royalty oils. Secretary Fall reported to me that Mr. Beaty had withdrawn his previous

proposition with regard to Teapot Dome as too liberal; that the amount he was offering us was decreased by some percentage that he states in the telegram. I think 1/5. Secretary Fall stated to me that Beaty had at first been willing to take the lease on Teapot Dome, and had made a certain proposition, and had on April 6th cut that proposition down, and that telegram so states.

Deposition of HARRY FOSTER BAIN, offered on behalf of defendants.

Direct Examination.

I am and have been since May 7, 1921, Director of the Bureau of Mines, Department of the Interior. From January 1, 1921, to May 7, I was Assistant Director and Acting Director; previous to that I had been engaged in consulting work, and in the year from April, 1918, to April 1919, I served as assistant director of the Bureau of Mines on war work. At a much earlier period I had been assistant director to the Iowa Geological Survey, assistant geologist in the United States Geological Survey, Director of the State Geological Survey of Illinois, editor of the Mining & Scientific Press in San Francisco, editor of the Mining Magazine in London, foreman, assistant superintendent and later manager of mining property in Colorado, consulting engineer in general practice of examination and reporting in various states
687 of this country and abroad. I was the first Director of the Illinois Geological Survey and held that place for four years. Prior to becoming Director of the Bureau of Mines I had the general knowledge of the geology of the petroleum fields which geologists all have; and while I was Director of the Illinois Survey the oil fields in Illinois were discovered. I visited them and arranged for a geological survey of them to be made by members of my staff. I took part in that survey and was frequently in contact with the work and examined and criticised, and, in general, administered the [wrok]. In connection with this and in preparation for it, I took occasion to visit oil fields elsewhere, and later, when I was in California, by reason of the interest of the paper that I was editing on the development of the mineral industries, I kept pretty close contact with developments in the California fields, particularly methods of technology and things of that sort, and was a frequent visitor to the California fields. Later, in my general work, I visited the Okla-

homa fields and other fields in the United States and the Burma fields; but I was never an oil expert in a special oil practice. This was all incidental to general geological work and to my administrative and editorial work.

The Bureau of Mines was created by act of Congress approved May 16, 1910 (36 Stat. 369), which act was amended by the act of February 25, 1913 (37 Stat. 681). The Bureau operates under these acts. In the Bureau we have a division known as the Oil and Gas Division. With reference particularly to petroleum matters, the general duties of the Bureau of Mines have to do with the increase in safety and efficiency of the mineral industries of the United States. In connection with petroleum, under authority delegated from the Secretary, the various orders, notably those of February 11, 1913, May 10, 1913, June 4, 1920, August 1, 1922, and March 3, 1923, the Bureau has also come to be charged with responsibility for supervision of mines and mineral leases under the Department's control.

The Department's own authority in this matter goes back to the Act of March 3, 1849, which is 9 Stat. 395, which specifically charges the Secretary of the Interior with direction and control of the mines of the United States.

688 Succeeding that Act, the Act of February 25, 1920, gave to the Secretary of the Interior large authority and responsibility over the lands, leases for mining, oil, oil shale, gases, coal, phosphates, and various other minerals. The Secretary, under the order cited, delegated to the Land Office all matter connected with the adjustment of titles to these lands, and to the Geological Survey, in accordance with its own organic law, all matters relating to the classification of such lands, and to the Bureau of Mines all matters connected with the operation of mines and oil leases on these lands. I use the word "lease" there supplementing mines, for the reason that while I believe an oil well is, in the eyes of the law a mine, as much as a coal mine, in common language we refer to leases in connection with the oil business, whereas in coal mining we refer to a mine. When I say supervision of leases I mean supervision of production under leases, supervision of all operations. That delegation of authority was recognized and ratified by Congress in making appropriations direct to the Bureau of Mines for doing this work. The first appropriation was a deficiency appropriation early in 1921, and following that appropriations have been made each year in the regular appropriation acts. The phrasing of the current appropriation is as follows:

"For the enforcement of the provisions of the Act of February 25, 1920, relating to the operation of oil, oil shale and gas leases on the public domain; for enforcement of laws pertaining to the operation of oil, oil shale and gas leases on Indian and public lands and Naval Petroleum reserves".

That is in the appropriation act for the Bureau of Mines, and the amount has varied from year to year, depending on the needs and the estimates.

Now, under this chain of authority, the Bureau acts as the direct representative in the field of the Secretary of the Interior in the supervision of leased mineral lands and enforcement of laws and regulations relating to them.

In Washington the officers of the Bureau are the advisers of the Secretary and the various bureau heads of the Department on technical matters relating to the operation of mines and leased properties. The work done under this
689 appropriation by this division covers now leases and permits on the public lands. I used the phrase "under this appropriation". The same thing is true with reference to all appropriation acts which have been passed since the enactment of the Act of February 25, 1920, as far as public lands are concerned. We also exercise similar authority over leases on Indian lands, with this exception, that there we act as direct advisors to the Indian Office rather than through the Secretary to the Indian Office. The latter does work which under the public land laws would be in the Land Office. We are more directly technical advisors than administrators on Indian lands. And, responding to your question, the original appropriation which was made did not include money for doing this Indian work, so that there has been that addition. Similarly in the first deficiency appropriation there was no money given the Bureau of Mines for work on the naval reserves, and that was added in one of the later appropriations. I refer to the deficiency appropriation early in the year 1921. That was the deficiency for the fiscal year 1920. It was subsequent to the passage of the Act of June 4, 1920. In the appropriation for the fiscal year 1924 there was in the estimate recognition of a responsibility to come to the Department for the Red River lands, and so this "and public lands" in connection with the appropriation item that I have cited, has been held to mean, in connection with the Secretary's delegation of authority, any public lands which come within the jurisdiction of the Secretary of the Interior, and thus the responsibility of the Bureau has increased as these different things have come into the Depart

ment. There are approximately 770 employees in the Bureau of Mines. The official title of the oil and gas division is "Petroleum and Natural Gas Division". There are about 150 employees in that division. It varies from time to time with the needs of the work. Of those about 75, which is approximately half, are directly engaged in this leasing work, and the other half are engaged in research work, devoted to the improvement of methods of production of oil and handling of oil, and the refining of oil. Their responsibilities are coextensive with the United States and its territories because it is research work and does not carry with it any authority, of course. The two [loops] of men work in very close
6280 relation, and the personnel is interchangeable, under one management, and we shift men from point to point as we need them. As to the character of the men employed, they include petroleum engineers, specialists in production, pipe line experts, refinery engineers, chemists, [gaugers], draftsmen and all of their assistants. The natural gas engineers act in an advisory capacity, that is, the men in the research branch act in an advisory capacity to the men in the leasing branch on all problems in connection with the methods of drilling and producing and operating gas wells and handling gas, and similarly with petroleum. The force includes also a group of men that we call expert drillers, whose business it is to assist our lessees in the handling of their wells, in the determination of where to land the castings where to cement the water off and how to do it. Very often it is necessary, in order to get a well properly taken care of, for our men to take actual charge of the work, doing the work at the expense of the lessee and with his men. That is about the type of work which they do.

These men are selected with a good deal of care, and while our friends in the industry pinch them off about as fast as we get them trained, we have so far managed to keep up the succession. For example, Mr. F. B. Tough, who is now chief of the division and who, previous to that, was chief mineral supervisor, and previous to that deputy supervisor for the Wyoming district, is a graduate of John Hopkins and of Columbia, and has spent thirteen years in the oil industry, beginning as a field geologist with the Southern Pacific interests. He came to us with a very wide range of experience. He was used first for two years and a half in Wyoming, under a cooperative agreement that we had, previous to the passage of the leasing law, with the men operating in the Rocky Mountain region, under which he acted as an adviser, and, when necessary, actually did the work in protecting their wells

from the incursion of salt water. That was the type of thing that was done. Work in the handling of wells underground and the handling of oil and gas is one of the things that our men are specialists in. The Bureau has had to devote a great deal of time and thought to drainage problems, the presence of water in sands, and gas pressures. In the first place, as a matter of research, Mr. J. O. Lewis, who
691 was at one time superintendent of our Bartlesville station, and later was chief petroleum technologist, was an expert in that particular thing. He carried on a good many researches and inspired similar researches in his men. Mr. Van A. Mills was one of our engineers, and did a lot of experimental work by making up structures and trying the actual effect of different theories. In addition to this research work, we had this definite responsibility in the field, to see if the Government properties are not injured by the incursion of salt water in the oil sands; and so our field men have had to get the most direct contact with these problems. The same thing with regard to drainage. Mr. Arthur W. Ambrose was for a time chief petroleum technologist of the Bureau of Mines. He came to the Bureau in 1917 as petroleum engineer. He was engaged on various duties in Washington and in the field, including acting chief of division for five months while Mr. Naremore, then chief of the Division of Petroleum and Natural Gas, was abroad on war work in connection with the International Allied Control. On February 1, Mr. Ambrose was sent to Bartlesville to be superintendent of the Bartlesville, Oklahoma, station, which was our research station for problems of oil and gas. He came from there to Washington on November 16, 1920, and became chief petroleum technologist, succeeding Mr. J. O. Lewis, who resigned to go into private business. Mr. Ambrose served as Chief Petroleum Technologist from then until October. I am not certain about the dates, but he served as Chief Petroleum Technologist up to within a few months of the time he resigned from the Bureau, which was in April, 1923. In other words, he served as Chief Petroleum Technologist from November 16, 1920 to October 1, 1922. He was then made Assistant Director and served as Assistant Director until the time he resigned on April 4, 1922. Mr. Ambrose is a graduate of Stanford University, specializing in geology and mining, working under J. C. Brenner. After his graduation he went into the petroleum fields of California, beginning as a field geologist and working from that into petroleum technology. He worked with the Dutch Shell interests. After his California experience he was in the

Texas-Louisiana fields, with the Oil Issues Corporation, and came from them to the staff of the Bureau.

692 Early in September, 1921, I visited the Rocky Mountain region on an official tour of inspection. I visited the Salt Creek field and Naval Reserve No. 3, in Wyoming. On that trip I met Carroll H. Wegemann, whom I had known prior to that time, he having been one of my assistants on the Illinois Survey at the time I was Director of it. I had known him quite well. I also on that trip met Mr. C. A. Fisher, a member of the firm of Fisher and Lowery, consulting geologists and petroleum engineers. Fisher and I had been associates in the two years and a half that I was in the U. S. Geological Survey and had been frequent visitors to each others' homes subsequently. I knew him both officially and socially. I met Wegemann and Fisher in Denver at a luncheon given for me and my party at the Albany Hotel and at a dinner given by the local section of the American Institute of Mining Engineers and Mr. Ambrose and I spent the afternoon with them in their offices and other offices in the First National Bank Building. Mr. Fisher wanted to show me, as a fellow geologist, some recent maps that he had been making, as an illustration of the type of work which his [form] was then doing, and Mr. Ambrose and I went into his office to see the maps. I am under the impression that Mr. Wegemann was with us at that time. We went from office to office and whether just at that minute Mr. Wegemann was with me, I do not know. But as I say, Mr. Ambrose and I saw the new structural map which had been made for the southern part of the Salt Creek field and of the navel reserve, made by Fisher & Lowery. This was discussed and the presence of faulting was brought out. We discussed a number of different faults, and the fact that Mr. Wegemann had found that his first map, made for the Geological Survey, was not accurate, and the fact that the so-called saddle was further south than had originally been anticipated was brought out in the discussion. The fact that the leases given on June 15, 1921, in the southern part of the Salt Creek field would carry development down into that territory, that drilling had already begun and that it would probably lead to drainage of that territory and from that on into Teapot Dome was also brought out.

The general necessity for doing something, of making some provision for the interests of the Navy in Teapot Dome, was discussed, though not in great detail, since at that time

the Secretary was not looking to the Bureau of Mines
693 for advice on such matters. We did not touch that until after the lease had been granted; but this was a discussion as between fellow geologists, for the sake of informing each other; but there was no difference of opinion developed among any of us that on this state of facts as shown by the maps, that it would be necessary to do something. I was not consulted until after the leases of June 15, 1921 had been granted. That was practically all managed by the Land Office and any consultation with the Bureau of Mines was minor and incidental. I mean the leases in the southern part of the Salt Creek field granted under the Leasing Act of February 25, 1920. After this the habit grew up of coming to us much earlier in the consideration of such things. Consultation of the Bureau of Mines by the Secretary of the Interior regarding drainage problems came about gradually. It is hard to say just when it started. To some extent he began to ask our advice rather early in 1921. I remember a specific conference as early as October, when I got back from this field trip. I recall a conference subsequent to October 23, in the latter part of October, 1921, at which Secretary Fall, Assistant Secretary Finney, Mr. Ambrose, and a representative of the Navy, who I think must have been Admiral Robison, though this was the first time to my knowledge that I had ever met him, were present. I did not know Admiral Robison at the time as anything except a representative of the Navy; and I think there were others there, perhaps Mr. Safford, who was Secretary Fall's administrative assistant, but I cannot be positive except with regard to the ones that I have mentioned. At that time we had out on the table the maps of Petroleum Reserves Nos. 1 and 2, and discussed specifically the policy in connection with drainage, what drainage meant, how it came about, what the influence of gas pressure was, what was the relative value of leasing strips along the border, as compared to leasing larger areas, and the whole general proposition of drainage of oil fields at that time. And in that discussion the Secretary was advised by Mr. Ambrose and myself that leasing of strips along the edge of lands was only a temporary defense against drainage; that those wells would themselves drain from the lands further back, and that any such system of leasing would simply mean a continuous series of strip leases. In addition to that, that that would take the gas pressure off from an indefinite and unknown distance, and that this losing of
694 gas pressure would mean that a large amount of oil would be rendered inert and unavailable; that it would

be impossible to tell in advance of drilling how far that damage would go in a specific case, but that experience had been that it would go so far that one or two lines of wells was not adequate protection. The general theory and practice of protecting against drainage was under discussion and definite recommendations were made with regard first to No. 3 reserve, where it was agreed by everybody at the conference, and there was no opinion to the contrary, that it was so divided up as between public and private lands, with wells already in, that there was nothing to do but to drill it up as fast as possible and get out all we could. With regard to No. 1, the facts were less complete, and it was decided definitely to offer for lease certain strip lease while we studied the matter further, and while the Secretary made up his mind as to what other work should be done. A strip lease is commonly referred to as an offset lease. With regard to Reserve No. 3 the discussion was less complete, though it was in the light of what already had been said with regard to the nature and character of drainage and the practice with regard to protection against it, the nature of that discussion was to the effect that this change in Wegemann's map and the extension of drilling in the southern end of the Salt Creek field rendered it inevitable that there would be some drainage from Naval Reserve No. 3. Ambrose and I stated at that conference what we had learned from Wegemann and Fisher in Denver. We said that we had seen the Fisher and Lowery map, that there was on the face of it this evidence that a considerable part of the northern part of the reserve would be drained, as fast as wells were drilled in the southern part of the Salt Creek field, and that drainage, while not at the moment large and important, would become increasingly large and important as time went on. That would be due to the fact that other wells would be drilled. There are drilling requirements in all of those leases, and the principal condition of giving the lease was that the men that took it would develop it and we pointed out to the Secretary that the development of these leases inevitably meant drainage from some part of the Naval Reserve. However, the
695 Secretary already had knowledge from some source not given to me, except by inference. What the Secretary said at that conference indicated he knew of Mr. Wegemann's report. He mentioned it. I do not know whether the actual report had gotten to him or not, but he had certainly been informed of these things in the Wegemann report before we told him about it. (The Wegemann report is Def. Ex. G.) I do not know that we had a copy of that report in the

Bureau of Mines at that time. I didn't personally see it. The conclusion reached at that time with regard to what if any action should be taken concerning Naval Petroleum Reserve No. 3 was that the interpretation of the facts that had been made to us in Denver and to the Secretary by this report, warranted a more careful study of the situation, and that that study should be made, and so far as the Bureau was concerned, we would find out anything we could about it, and that instruction was given to Mr. Ambrose. Following that conference Naval Petroleum Reserve No. 3 was occasionally referred to in conversations between the Secretary of the Interior and myself, but the next thing which I would really call a conference was in either the latter part of January or the first part of February, when Mr. Ambrose and I got back from another trip to the west. We got in late in the afternoon of the 21st of January. I cannot tell how soon after I got back this conference occurred but it was shortly afterwards; I cannot fix the date. I should think it was within a week after my return. Those present were Secretary Fall, Admiral Robison and Mr. Ambrose. I cannot state positively that there was not any one else there, but I know those four were present. I had met Ambrose on my way back from California. On that return journey, or after I got back, Ambrose gave me certain information he had obtained as to conditions in Reserve No. 3. He said that he had been looking over reports on wells which had been drilled at and near the border and told how they were coming in, told the depth at which they found water, the depth at which they found sand, the extent to which they conformed to the Fisher-Lowery map and things of that kind, all tending to emphasize the fact that it would be necessary to do something with regard to Naval Petroleum Reserve No. 3. When I say "necessary to do something," I mean either that the Government itself should do some drilling or do some leasing, or do something to provide for protection of that field. The
696 conference in the latter part of January, 1922, was again a general conference similar to the one in October, and in fact a sort of resumption of it, and report upon the facts as they were developed; and in that connection the Secretary was informed that in the opinion of the Bureau of of Mines Naval Petroleum Reserve No. 3 was subject to drainage, that it would be subject to more drainage as time went on and that some lease or other arrangement was some discussion as to how far south the drainage went. There was discussion as to faulting in there, and as to whether any part of the reserve could be held as free drainage;

the attitude taken by the bureau was communicated to the Secretary and others present; and it was based upon information that Mr. Ambrose and I had had coming from the men in the field on the ground, and our study of that data; and the attitude taken by the Bureau was that we could not tell how far south this drainage was going to extend, that we could not be positive that it would not extend indefinitely, and Mr. Ambrose, who had given the matter the most study, felt that what was geographically the northern one-third to perhaps one-half would be subject to considerable drainage, and more of it might be, but he did not really consider the possibility of drainage in the southern part as very serious or very close. The area we thought would be covered in the northern part of the reserve was approximately 1 3 or 1 2 of the entire reserve. As actually developed as the result of drilling it will cover 60 to 70 per cent. Mr. Ambrose expressed his views in the conference. The advice that Ambrose and I gave at that conference was that they ought to make up their minds to do something as to leasing; and at that time, too, I had worked out the details of the first contract of April 26, 1922, for the California Reserves, so that we knew something of the possibilities of making an exchange agreement, and while I cannot repeat specifically the words, the general thought was that something of this sort ought to be done for at least some part of No. 3 reserve. I do not remember that a great deal was said at that time about the advisability or inadvisability of strip leasing, because that was so thoroughly understood and accepted by all of us. It was referred to again and we talked about it, but there wasn't any difference of opinion among us.

When I say I advised that the government do something, in effect I meant that they give a lease to somebody on some part of No. 3 Naval Petroleum Reserve, more than a
697 mere boundary line lease. Of course it meant that in view of the fact that the Government had no money with which to do any work of its own, and we, in the Bureau, would not have believed in the Government doing that work anyhow. I had no active part in the negotiations leading to the lease agreement of April 7, 1922, with the Mammoth Oil Company except that from time to time Mr. Ambrose or Secretary Fall would ask my advice about different points. I did not take part in the negotiations and I do not think I ment with the persons who did so once.

I am familiar with the report of K. C. Heald of November 30, 1921 (Pl. Ex. 16). With regard to the statement in Heald's report stating that that portion of the reserve which will be affected by any drainage must be regarded as one of the poorest portions of the reserve, it has turned out to be wrong, as it is not the poorest part of the reserve. The biggest wells that we have ever had in that reserve have come in in that part, that is to say, that part which would have been affected by drainage as stated by Mr. Heald.

I talked to Secretary Fall regarding the proposal submitted by the Texas Company some time in March, 1922. I can only fix the time by reference to Beaty's testimony before the Senate Committee to the effect that it was late in March. I talked to Secretary Fall regarding telegraphic communications between him and Mr. Beaty and advised with regard to certain telegram. The telegram of Secretary Fall to Mr. Beaty of April 4th (Pl. Ex. 35) was sent following a discussion which Mr. Fall had with Mr. Ambrose and myself as to the terms of the proposal which Mr. Beaty had made to Secretary Fall, in which Mr. Ambrose and I pointed out in our judgment Mr. Beaty was confused as between Bunker A. and Bunker C oil and that in proposing to exchange Bunker A. oil he really had in mind Bunker C. oil, and that that would make very material difference in the value of his proposal.

In the second place, we doubted whether he had in mind anything more than a local pipe line down to the railroad, which was something which was already available and did not really offer any material increase in facilities. So Secretary Fall sent him the telegram of April 4th, to inquire about that. I am not certain that I was present when that
698 particular telegram was prepared, but I know about it and the subject matter was under discussion. Secretary Fall received Mr. Beaty's telegram of April 5 (Pl. Ex. 36), but I was shown that telegram after it was received and discussed it with Secretary Fall. This discussion was that in spite of Beaty's statement that his suggestions referred to Navy specifications, we still did not believe he meant bunker A oil, and we felt he ought to be checked on it beyond peradventure of doubt, so in our presence Secretary Fall dictated the telegram of April 5th (Pl. Ex. 37), in which he went into considerable detail about the difference in the oil and so forth. Now, Beaty's reply of April 6th (Pl. Ex. 38) makes it clear that we were right in our thought that up to that time he had not realized the difference between the two oils, and in that telegram, he withdraws his proposal as to

Bunker A oil, offering part of it, and reaffirms it with regard to part of the exchange. That telegram of April 6th withdraws it insofar as it pertains to Salt Creek Royalty oil but retains it insofar as it pertains to any royalty oil from any lease on Naval Reserve No. 3. I discussed that matter with Secretary Fall. Previous to the sending of this telegram I had discussed with Secretary Fall, very shortly after Mr. Beaty had been there, and my impression is about the same day that Mr. Beaty had been there, the royalty that Mr. Beaty proposed to give, which royalty Mr. Fall had on a memorandum or paper on his desk when I went in, and we compared those with the royalties of the proposed contract with the Sinclair Company. It was Mr. Ambrose's judgment and mine that the Sinclair royalties would bring in more royalty to the Government because they were higher royalties on everything above 100 barrels, and at that time we were very confident of getting large wells there.

There had been estimates as to the production in Naval Reserve No. 3 prior to that time. We were wrong in those estimates. Everybody was wrong. They were based upon experience in the Salt Creek field immediately adjacent and they were on the assumption that certain areas of sand within the reserve, falling within certain structural contours of which we had adequate knowledge would contain the same amount of oil per acre as in the Salt Creek field. We
699 made various computations as to the royalties. I am not certain that at the time our estimates as to the yield were prepared the royalties had been determined. There was a lot of jockeying backwards and forwards. At the time we were discussing Beaty's proposal with Secretary Fall we were familiar with the royalties proposed by Mr. Sinclair and discussed the relative merits of the two proposals. We took the ground, in talking with the Secretary, that the Beaty royalties would not yield as much oil to the Government on the basis of our expectations because they were lower royalties for everything above a hundred barrels. The outcome of the matter was that when Beaty's telegram of April 6th (Pl. Ex. 38), came Secretary Fall felt that there was no use negotiating any further with Mr. Beaty. It went to the point of a smaller amount of oil than he was willing to take, as well as to the smaller royalties. I considered the proposal of Mr. Sinclair and the lease of April 7, 1922, advantageous to the United States. I considered it advantageous in a great many respects. In the first place it gave us protection against drainage, which was the first thing

which led us to make the contract; it gave us what we considered good royalties; and gave us much needed additional facilities for handling oil from the Wyoming region, gave the Navy the option of exchange of its royalty oil for fuel oils which was better than the Navy had been able to get by purchase on competitive bidding through five years' experience, and also gave the Navy an option for having the lessee furnish to the Navy certain tankage and storage facilities which the Navy was very anxious to get. We of the Interior Department, had been interested from the very first in bringing about a condition which would give us more for our royalty oil from Salt Creek, for which we felt we were getting less, and in the price which the Sinclair contract set for the oil from Reserve No. 3, and which price I should have enumerated among the advantages which we got, we got the advantage in that district of a much higher price for a certain grade of oil than had ever been paid, and we expected to use that as leverage for getting the same, or a similar price, when we put up the Salt Creek royalty oil for auction.

700 I took a very active part in the negotiations which led up to the supplemental agreement with the Mammoth Oil Company of February 9, 1923.

Cross-Examination.

The first time I am positive as to hearing from Secretary Fall any suggestion about exchanging royalty oil for construction was in the October conference at the end of October, 1921. It was in his mind before that, and we may have had some conversation about it. My impression is that we did have a little conversation after he got back from California in August, and before I left in September; but we did not discuss it in any very great detail then. I was first informed that Secretary Fall would discuss it with oil operators or had discussed it with oil operators in a tentative way possibly late in August or September, positively in October. I am not positive as to whether Secretary Fall was away from Washington the 31st of July until the 4th of October, that is why I am not certain whether we had a meeting on it. If Secretary Fall's travel vouchers show that he was absent from July 31 to October 4, any such conference would have been before July 31st, or after the 4th of October. Indeed it would be some time after the 25th of October when I returned. That is what I had in mind.

The first time I was definitely called into consultation about the naval reserves was when we had this conference in late

October, 1921. A decision was then reached as to the policy to be pursued in the California naval reserve and that was the leasing of Number 2 reserve and strip leasing in No. 1. I do not think there was any representative of the Geological Survey at that conference. There might have been, but I do not remember that there was. With regard to Reserve No. 3 my impression is that it was stated at that time that the Geological Survey would be requested to make an investigation and report, but I would not want to swear to that. I know that Dr. Heald did go into the field, did make an investigation and render a report which went to Secretary Fall. I doubt if I actually saw Heald's report for a good while after it was rendered, but I knew about it in general terms very promptly. In other words, somebody gave me a verbal report if I didn't see his written report. From the time

701 that Heald rendered his report I didn't discuss Reserve No. 3 with Secretary Fall until late in January, 1922, unless possibly some casual reference. If it appears that Secretary Fall left Washington December 1 and did not return to Washington until some time late in January I only saw him once in the meantime, which was December 31, 1921, at Three Rivers. The question of Reserve No. 3 drainage was not discussed at that conference. It is therefore safe to say that if Fall left Washington December 1 I did not discuss Reserve No. 3 drainage at all with Fall between December 1 and some date in January. Having looked at Secretary Fall's official travel vouchers and my own it is quite clear that any conference with Secretary Fall could not have taken place earlier than the morning of January 27, 1922, at which Ambrose, Robison and I were all present. The conference was some time later than 7:30 A. M. of January 27th. I cannot fix the date any better than that. All I know is that some time after I got back from that trip, and in my judgment not very long after I got back, we had a conference. Mr. Ambrose had prepared no written report or memorandum with regard to Naval Reserve No. 3 at that time. I do not remember that at that conference it was agreed that Ambrose should prepare a written memorandum formulating the judgment of the Bureau of Mines about it, nor do I remember that it was not. Directions to have Ambrose's report of February 18, 1922 (Pl. Ex. 23) prepared did not come from Secretary Fall to me as Chief of the Bureau, except in the sense that at the conference in October it was understood that we were to get any information that we could and to furnish it and I assumed that Ambrose was doing this and going ahead with it. It is generally customary with reports

of that kind that they be routed by the Chief Petroleum Technologist through the Director of the Bureau, but not always. Secretary Fall had a considerable habit of sending for a particular individual that he knew in any bureau and having him work directly with the Secretary. I cannot tell when I first saw Ambrose's report of February 18, 1922. I cannot give any idea whether it was soon or late after it was made, except I am sure we talked about it and probably talked about it at the time it was being prepared, because we discussed the matter backwards and forwards. I cannot tell you when I saw the paper. I could not be positive that I ever
702 saw it until I saw Senate Document 210. I remember discussing certain items in the report. Whether that was on the basis of those items being in the report or on the basis of conversations or perhaps preliminary drafts or pencil memoranda I cannot tell you. I cannot say that I discussed that report as a finished document with Secretary Fall. I discussed the matters in the report with Admiral Robison, but I cannot say that I discussed the report with him. At no time from November 30, 1921, to and including April 7, 1922, did I have any conference with Dr. Smith, Mr. Mendenhall or Mr. Heald of the Geological Survey relative to conditions in Naval Reserve No. 3, or the proposed leasing of all or any part of it. To my knowledge no decision was reached as to leasing the Teapot Dome prior to the confererence of January 27th or later, which has been referred to. I do not have any accurate knowledge when the actual decision to lease the whole Dome was reached. I have knowledge that at some time, it may have been February 18th, or it may have been earlier, Ambrose was called in by the Secretary of the Interior to assist in drafting some document and he was working with the Secretary. At or about the time he was called in I obtained knowledge, either from Secretary Fall or from Ambrose or some person, that the thing that was being drafted was a lease of Teapot Dome and that the tentative draft was with Mr. Sinclair or some company to be nominated by him. Up to that time I had not been consulted as to the nature of the lease, the extent of the acreage to be leased, or the parties to whom to be leased. I cannot tell when I first learned that it was proposed to lease the whole of Teapot Dome, except that it was some time before this Beaty matter. My Bureau was not asked to assume at any time official responsibility as to how much of Naval Reserve No. 3 should at this juncture be leased. No formal recommendation as to quantum of leasing, the order of leasing, or the character of leasing was put up to me official-

ly or by me officially answered. So far as I know Secretary Fall made the decision as to what was to be done in that aspect. I do not know of any, and did not then know of any written reports other than the Heald report and the Ambrose report that were furnished and in hand prior to the execution of the lease. That does not include maps.

763 The preparation for the Pearl Harbor contract antedated the Mammoth Oil contract and the negotiations therefor. Subsequent to the conference of late October, 1921, I was delegated to prepare a tentative plan looking to a contract for the delivery of royalty oil running to the United States in the California reserves as a consideration for furnishing fuel oil in storage to be constructed by the one furnishing the fuel oil. And from the time of the conference in late October, 1921, down to the end of February, 1922, I was engrossed in an effort to work out that sort of a contract. In that effort I first consulted civil engineers or constructing engineers who might be considered competent to construct such storage facilities to get their idea about it. And after having done that and found that while it was an engineering proposition no engineering company would be likely to take crude oil for construction, I decided to refer the matter to oil companies. That had all the time been in mind as an alternative. Having put my plan in some kind of tentative shape I decided to go to California coast and interview oil operators. On the way to California I stopped at Three Rivers, New Mexico, on December 31, 1921, and there saw Secretary Fall at his home. Purely as a matter of coincidence Mr. Sinclair was there at the time. He arrived there on the same train that I did. No discussion of the lease of Teapot Dome or the proposed lease of Teapot Dome took place in my presence there. On the following day I went on to California. When I arrived in California I ascertained from more than one oil company and their attorneys that they could not see their way clear to making such a contract on account of the supposed illegality of the construction feature of it. Mr. Weil, an attorney for the General Petroleum Company, to whom I submitted the proposition informed me that he did not think it legal. Mr. Herrin, counsel for the Pacific Oil Company and the Associated Oil Company did not inform me that he held the same view, nor did Mr. Sutro, counsel for the Standard Oil Company inform me that he thought the contract would be illegal. I subsequently learned that he held the view that it would be illegal through correspondence and otherwise, some time in March,

1922. Subject to correction of the date, on March 4th or 5th I received a letter from Col. Black of Ford, Bacon
704 and Davis, in which Mr. Black enclosed a copy of Sutro's opinion. I called Secretary Fall's attention to these gentlemen's views on the subject of illegality before the Mammoth lease was signed. May I say, in regard to Mr. Herrin's opinion—not his opinion, but his doubts—that they were expressed in the presence of Secretary Fall, so it was not necessary to call his attention to that. Mr. Sutro's doubts were expressed in the presence of Secretary Finney and I discussed them with Secretary Fall. Mr. Herrin was in Washington and had not rendered an opinion, apparently had not made up his mind. Mr. Weil, right offhand, stated at once that he would have nothing to do with it. I do not remember whether these opinions were discussed by me with the Secretary Fall at any time in Admiral Robison's pres- —. I would like to add one thing more. You asked me whether the opinions were brought to the attention of Secretary Fall before the signing of the Mammoth lease. I am not positive that Mr. Herrin did not come in between April 7th and April 15th. It is entirely possible that Mr. Herrin's doubts did not appear until after the Mammoth lease had been signed. That does not hold true as to the other two gentlemen. I did not have any particular part in the drafting of the Mammoth lease. I was charged particularly with drafting the Pan American contract and that largely consumed my time during the period from January 1 to April 7, 1922 and thereafter. I did, however, have a discussion with Secretary Fall as to the certificate feature of this April 7, 1922, lease. The sense of the discussion was this: In our first conversation we discussed the pipe line certificate, a well established practice in the oil industry, as a means of effecting this exchange. I felt that it was better to make the exchange direct and to carry all our accounts in barrels of oil, or being more nearly within the intent of the Act of June 4, 1920. He felt that the means by which the thing was accomplished were immaterial, and that the building up of what he spoke of as a line of credit was the essential thing, whether that was done by means of certificates that were issued or by credits on the books, that that was immaterial; so in drafting of the Mammoth Oil Company contract, which was largely done through his office, rather than through my office, that form was used, while in the draft which was
765 drawn in my office, or through my office, we used the other form. I do not believe that I stated the matter

quite as strongly to Secretary Fall as to say that I didn't want the certificate provision in that contract because it looked too much like a sale or words to that effect. That was my feeling. I do not remember the phraseology used at the discussion with the Secretary or in the testimony before the Grand Jury, but there was no question in my mind then, and there is none now, that it was better to adopt the form we used when the Pan American contract was made, because when issued the certificate became a negotiable paper and might be construed as being more like a sale than a purchase. In effect I said something of that sort to Secretary Fall, to which he replied that the form in which the thing was done was immaterial so long as it was in fact an exchange.

I have no recollection of having seen Mr. Sinclair's proposition of February 3, 1922, before the lease was signed. I cannot give you the date when I saw it; how soon after it was submitted after February 3, but I did see it before the lease was signed. I never discussed the various terms in the proposition of February 3rd with Secretary Fall with the paper before us as a subject for discussion. The Secretary never brought that proposition to me or discussed it as a proposition with me. He asked my judgment on some of the things that are in that proposition, but not as part of that proposition, but as separate matters. He mentioned that those matters were proposals made by Sinclair. Secretary Fall, between January 27th and April 7th, told me that Mr. Gerald Hughes, of Denver, who, to the best of my knowledge and belief is connected with the Midwest interests, had been in to see him, the same afternoon that I was in the Secretary's office, and had been to see him some time that spring, and that he had discussed with Mr. Hughes those various details of the proposal; he did not say that Mr. Hughes made a proposal to him. I cannot fix the date of that conversation beyond the fact that it was that spring. I do not remember that he told me that any specific company negotiated with him on this proposal. We discussed the various companies in the United States and what the chances would be of getting a favorable contract from them, but I do not know of
his telling me that anyone was in negotiation with him
706 or that he was in negotiation with them. As to the
various companies we discussed, the Midwest Standard Oil Company of Indiana was one. Standard Oil of Indiana owns the Midwest. That ownership had been announced and was open. We discussed that as one group. Another group which was mentioned as a possibility was the Pure

Oil Company; another group which was mentioned as a possibility was the Gulf Company; another group was the Doheny group. Those are all that I remember. Secretary Fall told me he did not propose to ask the Midwest Standard group to compete because that group had, he said, a monopoly, or actually a dominating position already in the Salt Creek field, and the thing he was trying to bring about was to bring in some large financial interest which was not a member of that group. Secretary Fall did not tell me that he was going to ask the Pure Oil Company to compete. I think it was my suggestion or Mr. Ambrose's suggestion as to a possibility; it was a sort of question as to whether it would be worth while to ask them or not. He did not say he was going to ask them to compete. My recollection is we suggested those as possibilities, and it was rather the consensus of opinion that it probably was not worth while; but whether the worth whileness or the absence of worth whileness of it came from him or from us I do not know. The same answer applies to the Gulf. I do not know whether he intended to ask the Gulf Company to compete or not. As to whether he was going to ask Mr. Doheny to compete, he told me that Mr. Doheny had had some ambitions and had taken some action with reference to getting a lease of the Naval Reserve, but at what time he did not tell me, and he told me he had advised Mr. Doheny against doing it; adding that Mr. Doheny's field was in California and it would be foolish for him to go over into the Wyoming field. Secretary Fall said to me that he conceived it was his business to get from whatever company which was an independent company and could be gotten into the Wyoming field, the best proposition that he could get. He said he understood that to be his duty as an officer of the United States. That was not the phrasing that he used. As nearly as I can give his words they were that it was his duty as trustee of certain funds to get the highest price he could for the oil both in the naval reserves and in the Salt Creek field; that he believed that the way to do it was to bring into the field the buying power of a large independent organization, and that is what he proposed
707 to do. You see, it is just a little different phrasing.

Secretary Fall and I knew that Mr. Sinclair was in fact then interested in the Salt Creek field. He had a lease in that field. How many leases he then had I do not know. I had not looked it up. Secretary Fall and I, of course, know that the lease Sinclair had in the Salt Creek field was of a comparatively few acres.

I was familiar at that time with the fact that the Sinclair Crude Oil Purchasing Company was owned half and half by the Standard-Midwest group. But the Sinclair Crude Oil Purchasing Company, to the best of our knowledge and belief, had no interest in the Salt Creek field at that time,—did not buy oil there. We knew that the Standard Oil Midwest group had a community of interest with the Sinclair Pipe Line Company, the Chicago line. We knew that the Standard Oil Midwest owned half of the Sinclair Pipe Line Company. That was open and of record. The contract which was made was that any pipe line which was built by the Mammoth Company would connect with that pipe line or with the Prairie Pipe Lines. The Prairie Pipe Line Company was a Standard Oil of New Jersey concern. Those matters were matters of discussion between the Secretary and me.

Secretary Fall did not tell me whether he had sought out Mr. Beaty or whether Mr. Beaty had sought out the Secretary. I have tried to remember what if anything Secretary Fall said as to how the Texas Company came into the negotiation. I just do not know. I came in, as I recall it, shortly after Mr. Beaty had left, either that same afternoon or the next day, and Secretary Fall told me what had been happening, but as to how it came about, I do not know. The Secretary did not tell me that he had not mentioned to Mr. Beaty at all about the exchange of construction for crude royalty oil,—the so-called exchange. My understanding from Secretary Fall was that he had discussed a pipe line with Beaty. I do not know whether the Secretary told me that Beaty's exchange ratio of crude oil was better than the exchange ratio offered by Sinclair.

I was in the room when the telegram of April 6th (Pl. Ex. 38) came from Beaty. Secretary Fall produced an earlier telegram from Beaty, stating that Beaty hoped the matter would be held up until he could get [home] in ten days.
708 When the last telegram came the Secretary's expression was something to the effect "that there is no use in going any further with him."

Secretary Fall said to me that there had been a large number of inquiries about the leasing of this dome. He did not tell me that there was a good deal of interest out in the field and amongst the people of Wyoming as to what was going to be done with Teapot Dome. I knew that. I learned, not from the Secretary, but through Ambrose and [somebody] else after Ambrose started to draft that a contract was being drafted. The discussions I have mentioned with Fall or

Ambrose from time to time simply arose when I would see Fall or meet Ambrose and someone would start a conversation about this proposed lease. Before the contract was signed I had knowledge of the fact that the Navy did agree to the lease of the whole dome. I knew that was a changed policy. I knew that the public had been informed that the policy was otherwise before. I knew the public understood the old policy which was against the leasing of Teapot Dome or any part of it. I did not see Mr. Sinclair at all in connection with the preparation of the April 7, 1922, lease. I was not at any conference with regard to the preparation of that lease, where he was present. There was considerable checking about the amount of royalty which the government was to get out of Mr. Sinclair. Naturally Sinclair was desirous of not paying any more royalty than he had to and naturally the government was desirous of getting him up in the amount of royalties. While I was not present at those negotiations I heard of them through Mr. Ambrose or Secretary Fall. I knew that there was considerable hitching back and forth as to the amount of royalty Sinclair would have to pay.

Referring to the memoranda dated March 24, 1922, which was copied in Senate Document 210 and each of which is entitled "Memorandum for the Secretary" prepared by me to show the effect of drainage, those memoranda went up to the Secretary March 24th, or the next day.

Memorandum, March 24, 1922 (Pl. Ex. 157 and 158) offered. Offered as part of the cross-examination of the witness merely to show what it was the witness sent to Secretary Fall as pointing to the date when that information was furnished and for that purpose only and not as evidence of what
709 is said in the memoranda.

"Copy

March 24, 1922.

Memorandum for the Secretary:

In response to your instructions that an estimate be made of the loss of oil from Naval Reserves No. 1 and No. 2, California, which has resulted from the failure to drill offset wells on Government land at the same time that line wells were drilled on neighboring tracts:

For your ready reference I give herewith a brief history of the establishment of these reserves. The original Petroleum Reserve No. 2, California, was established on July 2, 1910, and from a part of the lands included in this area, Naval

Petroleum Reserve No. 1, California, was set aside on September 2, 1912, and Naval Petroleum Reserve No. 2, California was set up on December 12, 1912. Public lands were subject to drilling under the Leasing Act of February 25, 1920, and the Naval Appropriation Act of June 4, 1920. Responsibility for protection and development of these reserves was transferred to the Department of the Interior under Executive Order No. 3474 of May 31, 1921.

The estimates submitted below of the ultimate loss of oil to the Government as a result of the delayed drilling program were made by an engineer in the Bureau of Mines of several years experience and one who has specialized for three years on this particular kind of work. While such estimates vary, I believe this to be as accurate as can be made. The 'ultimate loss of oil' represents otherwise recoverable oil that can never be brought to the surface from Government lands under present production practices because of the loss of gas pressure in the oil sands due to drainage through adjoining lands. The estimated losses could have been avoided if the Government had assumed that any interior wells, except two second line wells, would have been drilled. The minimum number of offset wells needed on Government land prior to March 4, 1921, in order to protect the boundaries of the Naval Reserves from undue drainage, was twenty five, sixteen of which should have been drilled in Naval Reserve No. 2 and nine in Naval Reserve No. 1.

If on the other hand the Government had proceeded to develop completely the reserves at an earlier time so as to take advantage of the flush production it would have increased the production on Government lands to much more than that which can now be obtained. This is particularly true in Naval Reserve No. 2. It is also important to note that the policy adopted after March 4, 1921, of drilling offset wells will result in a marked increase in total production over that which would have been obtained if this policy had not been put into effect. It is difficult and impracticable to estimate the loss which would have resulted from further delay in drilling, without knowing when the latter would have started, but it is certain that the longer the drilling was delayed, the greater would have been the loss to the Government. If it had been postponed for several years from March 4, 1921, the loss would have been many times greater than the
710 estimates below.

Ultimate Loss and Value at Time of Production of Oil from Naval Reserves No. 1 and No. 2, California, from Failure to Drill the Twenty-five Off-set Wells.

Case I. From failure to drill all necessary offset wells prior to February 25, 1920.

	Naval Reserve #1	Naval Reserve #2	Total #1 and #2
Total production	0	5,700,000 bbls.	5,700,000 bbls.
Government royalty	0	1,000,000 bbls.	1,000,000 bbls.
Value royalty	0	$800,000	$800,000

Case II. From failure to drill all necessary offset wells prior to March 4, 1921.

	Naval Reserve #1	Naval Reserve #2	Total #1 and #2
Total production	4,300,000 bbls.	6,800,000 bbls.	11,100,000 bbls
Government royalty	2,200,000 bbls.	1,200,000 bbls.	3,400,000 bbls
Value royalty	$3,200,000	$1,200,000	$4,400,000

Case III. From failure to drill all necessary offset wells between February 25, 1920 and March 4, 1921.

	Naval Reserve #1	Naval Reserve #2	Total #1 and #2
Total production	4,300,000 bbls	1,100,000 bbls	5,400,000 bbls.
Government royalty	2,200,000 bbls	200,000 bbls.	2,400,000 bbls.
Value property	$3,200,000	$400,000	$3,600,000

Note: Royalties based on present royalties on leases granted.

These figures do not account for loss of oil from other than the 25 offset wells needed before March 4, 1921, but it is certain that the neighboring wells have affected the production not only of these wells but of other interior wells to be drilled later, and accordingly the real loss has been even greater than here indicated. The effect of drainage on interior production cannot be determined until further wells shall have been drilled but delay in properly protecting the boundaries of the Reserves against drainage by wells on adjoining lands has resulted in a loss of ultimate total production from the Reserve as a whole most conservatively estimated as follows:

Total Production	22,000,000 bbls.
Government royalty	2,800,000 bbls.
Value royalty	$8,800.00

(Signed) H. FOSTER BAIN,
Director."

"HFS-SFH

March 24, 1922.

Memorandum to the Secretary:

In reply to your inquiry as to information in possession of the Bureau of Mines regarding the loss of oil due to a delay

in drilling up a property, while adjacent properties are being drilled:

711 It has been long recognized in the petroleum industry that the first wells drilled to the sand yield more oil than do nearby wells drilled later. This is due to the fact that gas is the principal medium moving the oil to the wells and the first wells penetrating the sand operated under a high gas pressure, while those drilled after the gas pressure has been reduced almost without exception come in for a much smaller initial production.

When the drilling of the offset wells has been delayed from several months to several years, the initial production is often very much less than that of the wells offset. An engineer of the Bureau of Mines has been working upon this problem during the past two years. His studies have covered a great many wells in Oklahoma, Louisiana, and California, and his studies show that the loss due to delay in drilling is in places as much as 50%. The seriousness of this loss is shown in the following extracts from his report now in manuscript form and to be published in the future as a Bureau of Mines bulletin:

"During the early life of a pool, wells are brought in with large initial productions. As the pool becomes older, there is a marked decrease in initial production of new wells due to a fall in gas pressure. Naturally a loss in recovery per acre results, being due to drainage of gas and also in some cases to drainage of oil. The drainage factor is important to the operator if his property has not been protected properly by line wells.

"In order to obtain the maximum amount of oil from a tract in a pool where there are other operators, a fast drilling program is necessary, thus obtaining wells of large initial production, and consequently large ultimate production.

* * * * *

The following comparison of the ultimate recovery per acre has been computed from production figures for adjoining and intervening tracts when all conditions were apparently similar except time of drilling. This indicates to what extent losses in recovery due to delayed drilling have occurred in several typical fields.

Data Showing Effect Of Time Of Drilling On Ultimate Recovery.

Adair Pool, Nowata County, Oklahoma.

Within 480 acres		Number of tracts	Combined area of tracts in acres	Year Drilling began	Ult. Prod. bbl. per acre	Loss per acre
		2	160	1909	930	27% in 3 yrs.
		2	160	1912	678	
In 2 adjoining tracts		1	60	1906	3240	
		1	40	1907	2946	9% in 1 yr.
			Bartlesville-Dewey District, Oklahoma			
	In 4 adjoining sections	1	40	1905	5785	
		4	190	1906	2700	53% in 1 yr.
		5	200	1907	1926	29% in 1 yr.
		1	80	1908	1435	25% in 1 yr.
		1	30	1910	1152	20% in 2 yrs.
712	In 4 adjoining sections	1	40	1907	3521	
		4	170	1909	2560	27% in 2 yrs.
	In 4 adjoining sections	4	340	1906	3050	
		6	235	1907	2880	5% in 2 yrs.
		1	50	1910	2520	12% in 3 yrs.
			Nowata District, Rogers and Nowata Counties, Okla.			
	In 2 adjoining sections	3	90	1910	4291	
		2	100	1911	2189	29% in 1 yr.

Another example which may be cited is in Buena Vista Hills, Midway Field, California. Here the ultimate recovery for a certain drilled-up tract which is at least as favorably situated (as shown by a comparison of initial productions the same year) as an adjoining drilled-up tract, is estimated to be 24% less per acre, due apparently to a delay of two years in drilling.

In the Newitt field, Carter County, Oklahoma, four wells on 10 acres all came in for more than 500 barrels per day initial production; one and one-half months later a neighbor's offset came in for 220 barrels the first 24 hours, while 4 months later, an offset only made 120 barrels the first 24 hours.

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It is evident from these records that the production of oil from these wells is directly dependent upon the gas pressure included in and associated with the oil.

The loss in the initial production of wells due to delay in drilling, reflects the loss in pressure, and varies with the number and proximity of producing wells in the same pool, the size of the pool, and the time of delay in drilling.

Effect Of Distance.

The effect of distance from producing wells on initial production is illustrated by the following examples:

Buena Vista Hills Area, Kern County, California.

During the five-year period, 1913-1917, the average yearly initial production of 24 isolated wells in the Buena Vista Hills area, California, was 260,000 barrels, while during the same period, that of 104 wells drilled close to producing wells was 172,000 barrels, that is, the initial yearly productions were 50% greater for isolated wells than for closely spaced wells.

Tract in Osage County, Oklahoma.

The following table shows the effect of distance from already producing wells on the initial production of new wells, in a large tract in Osage County, Oklahoma.

713

Year	Spacing in feet	Number of wells	Average initial daily production (bbl.)
1917	over 1,000	18	328
1917	660	14	246

This shows that in 1917, those wells drilled at a distance from producing wells had 33 1/3 larger initial daily production than wells drilled one location away from producing wells.

Area in the Caddo Field, Louisiana.

Year	Distance from producing wells	Number of wells	Average initial yearly production per well in bbls.
1917	660	21	18,200
1917	1,320	6	30,500
1918	660	21	15,000
1918	1,320	8	18,500

All of the wells in the above table were scattered throughout one producing area. The average well drilled 1,320 feet from the producing wells was apparently no more fav-

orably situated for production than the average of the wells drilled 660 feet from producing wells. In 1917 the ratio of initial yearly production of wells drilled 660 feet from producing wells to that of wells drilled 1,320 feet from producing wells was as 6 is to 10. In 1918 it was as 8 to 10."

From the above it is clear that delay in drilling offset wells results in a loss in ultimate yield per acre of 5 to 50% and that the nearer the wells are to the land being drained the greater the loss. It also emphasizes the necessity of carefully spacing wells in order to obtain the maximum yield."

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714 Secretary Fall did not make specific request to prepare the particular memoranda. The subject matter of these memoranda had been discussed with the Secretary at intervals from October on; and when Mr. Cutler, who was our principal expert on these particular things was in town at the particular time, it seemed a good opportunity to summarize all this and put it in the form of definite memoranda for the Secretary's use. The memoranda had no reference, specifically, to the leasing of Naval Reserve No. 3, and was not intended as a supporting memorandum for what was being done, except in the sense that it gave specific instances of losses to the government through failure to take into account drainage and to guard against it by leases. I was not asked to furnish the memorandum to give the Secretary some support as to the execution of the lease of April 7, 1922. It would be in my mind a support for that. I had it in mind that it would be a support to the Secretary in making leases upon naval reserves, including Reserve No. 3. When I rendered that memorandum I do not remember that I had knowledge whether in fact the Mammoth lease had practically been agreed to.

I received the letter of March 31, 1922, from Secretary Fall. Enclosed with that letter was the letter of Secretary Denby, dated July 29, 1921 (Pl. Ex. 3); also a portion of Secretary Fall's report to the President, dated September 24, 1921, which was a report of what he was doing in California. I did not request these papers from Secretary Fall, he sent them to the Bureau of Mines as an original matter in pursuance of an order he had issued to the effect that the Bureau should have a complete file of all papers and documents with reference to Naval Petroleum Reserves. I remember the date on which the reserves were by formal order committeed to the Bureau of Mines. It was March 4,

1922. The formal order is Pl. Ex. 11. Early in 1922 I suggested to my superiors in the Interior Department the advisability of getting the opinion of the solicitor of the Interior Department on the legality of the proposed construction program. I forwarded to Assistant Secretary Finney the letter of January 25, 1922, on that subject.

Letter, Bain to Finney (Pl. Ex. 159) offered as a part of witness' cross-examination.

715 January 25, 1922.

Mr. E. C. Finney, Acting Secretary,
Department of the Interior,
Washington, D. C.

Dear Mr. Finney:—

Attached is copy of the opinion of the Advocate General of the Navy covering the exchange of royalty crude oil for fuel oil in storage. It may be well to get the opinion of the Department Solicitor, informally at least on this matter.

Cordially yours,

H. FOSTER BAIN,
Director.

I remember receiving the letter of March 3, 1922, from Charles N. Black.

Letter, Black to Bain (Pl. Ex. 160) offered as part of witness' cross-examination.

Ford, Bacon & Davis
Incorporated
115 Broadway
New York

New York, March 3, 1922.

Mr. H. Foster Bain, Director,
Bureau of Mines, Department Interior,
Washington, D. C.

Dear Sir:—

I take pleasure in enclosing herewith copy of Mr. Sutro's opinion on the legality of the proposed oil exchange.

Will you be kind enough to send me two sets of blue prints and two sets of specifications for the oil storage facilities?

Mr. Storey advises me that he will arrive in New York this coming Sunday and expects to be in Washington on Tuesday.

Very truly yours,

CHARLES N. BLACK.

BM Pearl Harbor Storage.

The above letter enclosed a copy of the legal opinion of Mr. Sutro on the question of construction in consideration of royalty oil. My reply was dated March 4, 1922.

Letter, Bain to Black (Pl. Ex. 161) offered as part of witness' cross-examination.

March 4, 1922.

Colonel Charles N. Black,
c/o Ford, Bacon & Davis, Inc.,
115 Broadway,
New York, N. Y.

Dear Colonel Black:

I am greatly obliged to you for the copy of Mr. Sutro's opinion which I am having studied here. I think we
716 will be able to arrange a form of bidding which will meet the principal objections he has in mind, and I am sure we can back our plan with good legal opinions, since the matter happens to have been examined by attorneys outside as well as inside the service. I will give you the results later.

Meanwhile, I note our request for two copies of the plans and specifications. We expect now to be able to send them out on Monday, or possibly as late as Tuesday. I will be glad to see that copies reach you promptly.

I am delighted to know that Mr. Storey is coming East and will look forward with great pleasure to having the opportunity to discuss the situation with him here on Tuesday.

Cordially yours,
H. FOSTER BAIN,
Director.

BM Pearl Harbor Storage.

Opinion of Oscar Sutro, enclosed in letter (Pl. Ex. 160) offered as part of witness' cross-examination for the purpose of showing what was brought to the knowledge of Interior Department with regard to the plan for exchange of crude oil for tankage facilities (Pl. Ex. 162).

Exchange of Oil and Gas for Tankage
For Storage of Navy Oil.

January 27, 1922.

Mr. H. M. Storey,
Vice President, Building.

Dear Sir:

I have carefully considered the question whether the Secretary of the Navy has power, under the naval appropriation bill of June 20, 1921, to exchange oil and gas products from the properties within the naval petroleum reserves for tankage for storage of Navy oil. I am clearly of the opinion that the act does not confer such authority.

The proviso to the naval appropriation bill of June 20, 1921 (41 Stat. 1, pp. 813-814), reads as follows:

"Provided, That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an act of congress approved February 25, 1920, entitled "An act to provide for the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain, or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States: And provided further, That the rights of any claimant under said Act of February 25, 1920, are not affected adversely thereby: And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922: Provided further, That this appropriation shall be reimbursed from the proper appropriation on account of the oil and gas products from said properties, used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct.

It is my opinion that the word "exchange" as here used authorizes the exchange of oil and gas products of the naval reserve lands for other oil and gas products. Any other con-

struction would seem to defeat the legislative intent.
717 For illustration, the aviation appropriation appropriates $3,883,400 for air craft. It can not be supposed that after this appropriation is exhausted the Secretary of the Navy could exchange fuel oil from naval resources for additional aircraft.

The second additional proviso appropriates $500,000 "for this purpose," which purpose includes the storage of oil. To permit the Secretary of the Navy to exchange oil for the storage would in effect authorize him to increase the amount of the appropriation made "for this purpose."

Furthermore, the third additional proviso directs the reimbursement of the $500,000 appropriation "from the proper appropriations on account of the oil and gas products from said properties used by the United States." I take this to mean, for example, that if oil used from the naval reserve lands is used as fuel oil on battleships, then out of the $10,000,000 appropriation for "coal and other fuel for steamers' and ships' use" (41 Stat. L., pp. 826) the value of the fuel oil so used shall be reimbursed to the $500,000 fund above mentioned. If oil gas could be exchanged for storage, the $500,000 fund provided "for this purpose" would have to be reimbursed under the third additional proviso above referred to, to the extent of the value of the storage, out of the same $500,000 fund. To construe an act so as to require the reimbursement of a certain appropriation out of the same appropriation is, of course, an absurdity.

The program considered in Secretary Denby's letter of December 14, 1921, if carried out though the interposition of a contractor who would exchange tankage for oil upon an understanding with an oil company for the sale of the oil, would be virtually a sale of the oil and a purchase of tankage. The money values of the tankage would be determined, and, I assume would be arrived at by bids. I assume that the money value of the oil would be determined according to its market value. To this would be added the circumstance that the oil company would have engaged to purchase the oil from the contractor. The operation in its essentials would be nothing less than the sale of the oil by the Navy and the investment of the proceeds in storage.

Nor do I see anything in the suggestion that because the main proviso authorizes the Secretary to "store" the oil and gas. Furthermore, the appropriation in the second additional proviso designates the source from which he is to

provide the means of storage. If this appropriation is not sufficient and additional appropriation should be requested, but the oil and gas products, in my opinion, can not be exchanged in such a way as to evade the necessity of asking for such an appropriation.

There seems to be practically no precedents in the decisions on this subject. In United States vs. Steele, (113 U. S. 128), an exchange of scrap material for plumbing work on naval vessels was held unauthorized and condemned as a circumvention of the law in respect to appropriations. The powers of the Secretary in that case were derived under a statute much narrower than the present act. In my opinion however, this transaction would in the last analysis be tested by its true intent, and its intent would obviously appear to be to circumvent the limit placed by Congress upon Naval expenditures.

I may add that if the transaction is unauthorized, there is no statute of limitations which would bar an attack upon it. I think the plain purport of the statute is that the Secretary of the Navy shall sell the oil and convert the proceeds into the general fund, unless he exchanges it for other oil.

Therefore, I would not approve the proposed transaction.

Very truly yours,

OSCAR SUTRO.

Mr. Fall was acquainted with Sutro's opinion. I am not positive that he ever saw Sutro's opinion, but he was acquainted with the fact that Sutro had rendered an opinion advising his company not to take up the business. There had been a discussion as to the taking of the opinion of the Attorney General before these contracts were concluded. The question came several times before the negotiations
718 were completed. The principal reason that Secretary Fall urged in discussions prior to signing the contract as to why he did not want to refer the matter to the Attorney General was this: That there was two types of lawyers; one is a lawyer who tries to find a way to do things, the other is a lawyer who tries to find objections to doing things; that it was a matter of knowledge and experience that the Government was filled with the second type of lawyers; that the general amount of grief that comes to anyone when he tries to do anything for the Government, was such that practically all

the lawyers in the Government service were hunting the most minute fly-specks, technical objections to doing anything; that there was substantially no chance that the Attorney General himself would render the opinion, but that in the sort of mill there, the Lord only knew who it would come before, that it would eventually come before some law clerk, some one who was not at all interested in getting anything done, but who was simply interested in never writing an opinion that anybody could ever possibly find fault with and that under those circumstances the chances were at least even, or at least there was some chance that an adverse opinion would come up, would be considered and would come over to us, and if the Attorney General signed such an opinion—and I might tell you right here that we get a lot of them—that then he would be estopped from doing anything; that he felt there was no necessity for getting the opinion of the Attorney General.

I did not find that it was impossible to get engineering firms to take a contract like this Mammoth Oil Company lease or a contract like the Doheny exchange contract. We did get some bidding from engineering firms, and terms from others, but we did not anticipate that they would do it; and in the nature of things it would be difficult because the very first one I took up, the April 25 contract, involved the proposition of taking something like 5,000,000 barrels of oil and agreeing to take it over a term of years in the future. Construction firms, with one exception that I know of, are not in the business of buying and selling oil. We could not give money to construction firms because we had no authority to buy or sell. The fact that we had no authority to buy or sell was discussed and it was agreed we had no such authority. If we sold oil from the naval reserves the money had to be turned into miscellaneous receipts of the Treasury and could not be used except by
719 an Act of Congress, through an appropriation. It was not a matter of discussion in my presence and Secretary Fall's presence that this form of dealing constituted establishing naval fuel depots without an appropriation by Congress, and without the designation of the places therefor by Congress. I heard that the Mammoth Oil Company lease of April 7th had been executed by Secretary Fall within a day or two of its signing. Secretary Fall showed it to me. He did not tell me it was to be locked up and to stay locked up. I know it was not given out. Secretary Fall went away

on April 13th to Three Rivers, New Mexico, and I know it had not been given out up to that time. Secretary Fall told me why he didn't want it given out. We were at the same time negotiating the April 25th contract, bids were set to be taken on the 15th, and it was considered unwise to make an announcement of this kind which involved a change in policy, piecemeal, and he wanted to put these both out at once. Secretary Fall was very anxious for us to hurry up the other contract if possible, and was quite disappointed that it could not be done.

I identify a memorandum dated April 13, 1922 (Pl. Ex. 7 B). That, or something substantially the same was circulated through our department.

I presume I sent the letter to Senator Kendrick (Pl. Ex. 70) with its enclosures, the memorandum of April 6th (Pl. Ex. 70A).

"Q. Can you give us an explanation of why, with knowledge on April 10th that the Teapot Dome lease had been signed, you sent out on April 11th memorandum of April 6th?

A. The letter was to the effect that Secretary Fall "Has asked me to see that you are supplied with copies of all statements given out by this Department with reference to the Teapot Dome—"

Q. (Interrupting) Doctor Bain, the point I am complaining about is that you, on April 10th, gave out a statement which had been prepared for the press on April 6th.

A. Yes.

Q. And on April 10th, what was in that statement was distinctly untrue?

A. Yes sir.

729 Q. And you knew it was untrue?

A. Yes, but I gave him what I was instructed to give him.

Q. In other words, you felt that you were not at liberty to write Senator Kendrick that the Teapot Dome lease had been signed on April 10th? A. I certainly was not.

Q. All that you were at liberty to do was to send him that old, historical statement of April 6th, which, at the time you sent it to him, you knew to be wholly untrue and misleading?

A. I cannot accept your term—

Q. Wasn't it untrue?

A. I say I cannot accept your expression "old, historical statement." I was asked to send him all the things which

had been given out and I sent him the things which had been given out.

Q. And didn't you know perfectly well, and you could not be mistaken about it, that Mr. Kendrick wanted information as to what was being done in Teapot Dome?

A. Yes sir.

Q. You could not be mistaken as to the fact that the lease had been executed by Secretary Fall prior to April 10th, could you? A. No sir.

Q. And you could not be mistaken as to the fact that by sending him the press memorandum of April 6, under cover of a letter dated April 10th, that you were misleading him as to what the situation on April 10th was, could you?

A. No sir, that is correct. I do not think Senator Kendrick applied to me for information about the subject, but Secretary Fall instructed me to send him certain things.

Q. Do you know when Secretary Fall told you to see that Senator Kendrick got copies of everything that was given out? A. No sir.

Q. Do you know how long it was before the letter of April 10th, 1922, was written?

A. No sir."

721 The supposedly recoverable oil in Teapot Dome, according to the estimate of the Bureau of Mines was 135,000,000 barrels, divided between the first Wall Creek sands and the Second Wall Creek sands. The estimate of the amount of recoverable oil in the first Wall Creek sand was 50,000,000 or 55,000,000 barrels. I did not inform Secretary Fall that I feared that the 50,000,000 barrels in the first Wall Creek sand was subject to drainage. It was not considered to be subject to drainage. The reason it was not was that in the Salt Creek field as they approached Teapot Dome in the first Wall Creek sand they struck water. I do not remember that I told Secretary Fall that the 50,000,000 barrels was safe. I do not remember that that was specifically discussed as to it being as safe as a church or as safe as anything else. In giving Secretary Fall full information that matter was not emphasized one way or the other. It was perfectly well known that the first Wall Creek sand was in our judgment sealed off. As to how I knew that Secretary Fall knew that fact I cannot tell you anything he said which showed he knew it. In any report from my bureau that fact ought to be mentioned. I cannot say when it was mentioned. As to whether it ever was mentioned in my presence in conference with Secrtary Fall I can say this, that our discussions of drainage were all as to the second Wall Creek

sand. The second Wall Creek sand was supposed to contain 80,000,000 or 90,000,000 barrels. I thought that drainage would become imminent by drilling in the Salt Creek Field some time within a year. That time,—a year,—would allow ample time for further investigation and ample time for procuring other bids if it had been desired to do so. There was no necessity in order to protect against drainage to get a lease through in three months time. There was some doubt at that time as to whether the saddle contained oil or water. If the saddle contained water Mr. Ambrose
722 and I both agreed that the saddle would constitute a seal or wall between Teapot Dome and the Salt Creek field. The Navy Department at that time had half a million dollars,—something of that sort,—available for use in these reserves. I refer to the appropriation in the act of June 4, 1920. A well into the saddle could have been drilled in something like three months and it was found that oil was in the saddle, and nothing but oil in the saddle, then we would have been sure that the northern one-third and perhaps the northern one-half of Teapot Dome was subject to drainage. That would have made the matter certain. As it stood at the beginning of February, the matter was more one of fear or suspicion. Mr. Tough and our men felt quite certain that there was oil in the saddle. The doubt was expressed by other people. Mr. Ambrose felt quite certain that there was oil in the saddle, largely on the basis of Mr. Tough's opinion because he had such confidence in Tough. I notice that Ambrose's report (Pl. Ex. 23) says that if there is oil in the saddle the northern part of Teapot Dome will be susceptible to drainage. I will have to refresh my memory by looking at his report to see what it says about there being oil in the saddle, but know what was in his mind at the time because we talked about it. I have looked at his report. It does suggest that there is oil in the saddle in this language: "Wells are located far enough down the dip to indicate that the second Wall Creek sand may contain oil in the saddle between the two structures." Thereupon this took place:

Q. Is that your reading of a sentence which you believe states that there is oil in the saddle? I understand the word "may" to mean that there is doubt about it. Do you understand the word "may" to be confirmation of a fact, Doctor? A. "May" denotes doubt, yes.

Q. Now, then, point out to me where he says that in his judgment there is oil in the saddle. You have pointed out one and have taken it back; now, show me another.

A. He doesn't say positively there is oil there.

Q. Where does he indicate that he thinks there is oil in the saddle?

A. He indicates a doubt also as to there being water in the saddle.

Q. Doctor, is that a frank answer to my question? I
723 will ask the stenographer to repeat the question.

(The stenographer thereupon repeated the pending question as follows:)

Q. Where does he indicate that he thinks there is oil in the saddle?"

A. Only in this sense, that he indicates doubt on both sides, and does not indicate his belief—

Q. That there was oil in the saddle? A. Yes.

Q. Now, if he doubted about the water, he had a doubt about the oil, didn't he? A. Yes.

Q. He couldn't have doubted that there was water there unless he doubted that there was oil there, could he?

A. That is correct.

Q. Then, aren't you fencing with me, when I ask you to point out where he indicates that there is oil in the saddle, and you tell me he indicates doubt that there is water in the saddle? A. I do not want to fence with you.

Q. I hope not.

A. I do not want to be anything else but frank in this thing.

Q. You never have been so far, and I do not expect you to be anything different—

A. (Interrupting) But I know positively from my own conversation with him that his belief was that oil was there.

Q. He does say in this very report that this condition, referring to water and oil in the saddle "could not be definitely predicted until drilling takes place, because of such unknown factors as", and so forth. A. Yes.

Q. Then he winds up his report by saying—

A. That if oil is found.

Q. "If". He makes it an "if" proposition, don't he?

A. Yes, that is correct.

Referring to the conference of late January, 1922, I
724 cannot tell you how long it lasted; it might have been half an hour, or it might have been an hour and a half. It might have been all afternoon. I cannot tell you. My general impression now is that it lasted somewhere from half an hour to an hour and a half and that the first thing

that was taken up at this conference was a report by me of what had occurred on my western trip relative to the exchange of California royalty oil, and that I gave those present the details of my visits to various oil companies, of the reception I had met with and what I thought the prospects were that an oil company could be procured to make such a contract. I cannot tell you how long that discussion took. It was general. We talked about it sitting around there together. I gave my report and they asked questions. I do not know what was next discussed. This was not a formal discussion where people sat around the table with an agenda, where somebody talked, and, when the topic was finished, we passed a resolution, and then somebody else did something else; it was a conversation where we sat around the Secretary's table and talked about things informally, backwards and forwards, going first from one to another. I certainly did not realize at that time that that conversation was going to dispose of 9,000 acres of oil land by lease. I know that in that conversation we did enter into the question of whether we ought to do something with regard to No. 3; that is, what they would do.

I do not remember who first brought up the question of Teapot Dome at this conference or just how it came up. I think probably Secretary Fall may have said "Ambrose what did you find out about the Teapot Dome?" or Ambrose may have said something about what he found out while he was West. I find myself under difficulty in trying to remember conversations and conferences. The conversation that took place there had reference to the nature of drainage, how drainage took place underground, how far it extended, and things of that sort, and Mr. Ambrose's information, dealing with his visit to Mr. Tough, to the effect that there were wells going down in the southern part of Salt Creek, that these obtained water and oil in certain horizons, which indicated that the boundary line between the two would be affected and would affect the distribution of oil and water in that territory. It was that kind of a conversation. And out
725 of that and in connection with it Ambrose made the statement, with my express approval, that this indicated there would be drainage from Naval Petroleum Reserve No. 3 as the result of the drainage of the leases. I stated that this was in accordance with my own belief and interpretation of the facts put before us. Something was then said either by Fall or by Robison, I do not know which, that the situation should be taken up with the Navy Department and a determination of policy made as to what they wanted

to do about it. Robison said that the Navy would want an exchange arrangement, that they would want something which would provide storage and that he was personally very much of the belief that they ought to develop the property so they would get out the oil. He did not indicate that as being the opinion of the Navy Department at that time, but as being his personal opinion, to be taken up with the Navy Department to see what they wanted to do. Robison also stated that he wanted in any event to get that oil in shape so that they could get it out, and he would take it up with the Navy Department and see what the opinion of the Department would be. With regard to the pipe line Robison related his experience in war times and referred to the fact that the oil out there without a pipe line was not worth a dime to the Navy. That was not new to us in the Interior Department. Secretary Fall wanted the same thing. The general tone was that if the Navy Department wanted all this that this discussion perhaps opened up the way for bringing about the thing that both departments wanted. I remember nothing being said by Robison at that time about a genuine national emergency. He did make statements as to national defense requiring that oil be stored at seaports or at strategic points on account of some emergency. I cannot be positive that it was at that conference; but I remember distinctly the statement; but you see he was rather chary of talking to us about things like that that went to Navy policy itself.

The statement was made that no information was to be given out about the Mammoth lease because this constited a military secret. The first papers that came to me in the Pearl Harbor matter from the Navy Department had on them the statement that inasmuch as these were part of the war plans of the Navy, they should be treated in as confidential a manner as possible, and that idea was carried through
726 into the other. Whether anybody specifically made that statement to me with regard to the Mammoth Company lease, I cannot say.

It would have cost in the neighborhood of $25,000 to drill a well down to the saddle between Teapot Dome and Salt Creek. If it struck water it would be worth nothing. If it struck oil it would be worth something and events so proved because we got good production there.

At the time the Mammoth lease was under negotiation the Midwest Company was a large producer in the Salt Creek field. Its production then was in the neighborhood of two-

thirds or three-fourths of the total Salt Creek production. I am under the impression that the Standard Oil of Indiana was not ready to put a pipe line into that field at that time. I got that impression from some men in their organization at that time. I think nobody controls the production in the mid-continent field. It is the most split up production in the world. The mid-continent field is usually taken to embrace Kansas, Oklahoma and North Texas. The Prairie Company does not control a large part of the production of that field, but is the largest buyer of oil in the district and transports it out of the district. The next largest buyer of oil in that district is the Sinclair Crude Oil Purchasing Company. The third is the Magnolia Company. The great bulk of production shipped out of the mid-continent field is shipped out either by the Prairie or by the Sinclair Company. If there is any chance to fix the price amongst the buyers it is fixed by one or the other of these companies. As a matter of fact one always follows the other. Some times one announces a little ahead of the other. Secretary Fall and I both knew in March, 1922, with the emphasis on the word "if" as to the chance to fix the price in the mid-continent field. I am familiar with the fact that in the last few weeks the Sinclair Crude Oil Purchasing Company has notified the Department of the Interior that it has started a reclassification of the oils in the mid-continent field in the sense of posting a new classification or a new price. The first notice of that change came to us from our own field observers in the form of a telegram to the effect that that price had been announced. We took that to mean as it had meant in the past that we would and they would recognize the field prices under these contracts as applying in Salt Creek. Secretary Work took up the correspondence with the Sinclair Company and
727 I have not seen any reply from the Sinclair Company to that letter. If there is such a letter I do not know about it. To that extent I should correct my statement.

When Beaty's last telegram (Pl. Ex. 38) came in it was quite clear that Beaty had gotten the difference between Bunker A and Bunker C oils clear in his mind. It was then quite clear that he was willing to give Bunker A in exchange for royalty oil and to give considerably more Bunker A in exchange for royalty crude than Sinclair's proposition involved, substantially 20% more. He says "Being willing to go that far" meaning to the point of exchange "in order to obtain lease on royalty basis and other terms outlined or to be agreed upon" and further "and am still willing to do so". Then he goes on about the matter of purchasing Salt Creek roy-

alty oil etc. The balance of the telegram deals solely with Salt Creek royalty oils and I so understood it. It was a clear bid to go ahead and talk. As to why there was not some jockeying with Mr. Beaty as to how much royalty Mr. Beaty would pay, that was a matter for the Secretary to decide. I do know that what the Secretary said was that it was not worth while to consider Beaty's proposition any further and it was up to him and not to me. The Secretary and I knew that the Texas Company was a very large company and entirely financially able to carry out anything it would undertake to carry out.

Redirect Examination.

Referring to my cross-examination where I spoke of the fact that after my return from California I was informed that Secretary Fall had discussed the matter with oil operators in a tentative way, I meant the conversation I had in Secretary Fall's office in which he told me, among other things, that he had talked with Mr. Paul Shoup, of the Pacific Oil Company, and that he was willing to make an arrangement under which he would build reservoirs to store royalty oil for the Navy from the Naval reserves, and take the pay for the reservoirs in the form of oil; and Secretary Fall said that he had discussed this matter with other oil companies. The conversation referred to the California reserves, and they had in mind at the time underground concrete
728 tanks to be built near California terminals, in San Francisco and elsewhere. I believe that there is a letter, as I remember it, of July 29th, either from the Secretary of the Navy, or to the Navy Department, at any rate there was an interchange of correspondence and they evidently had this in mind. The reason I had no conferences with Dr. Smith, Mr. Mendenhall or Mr. Heald of the Geological Survey between November 30, 1921 and April 7, 1922, was because we saw no necessity for such conferences. We felt that the problems which had to do with production, which was in our field, did not necessarily involve any conference with them. There was a difference of opinion, as apparent from these reports, on the amount of drainage, but that was a quantitative difference more than anything else.

When in my cross-examination I referred to the opinions or views of Weil, Herrin and Sutro, those opinions referred to the project which resulted in the contract of April 25, 1922, for exchange of royalty oils in Reserves Nos. 1 and 2, for construction and storage at Pearl Harbor. I did not under-

stand that the opinions or views of those gentlemen had any relation to the contract which eventuated between the United States and the Mammoth Oil Company. That contract was never mentioned in my presence with any of them, and furthermore, in our discussions the thing that seemed to run in their minds as the difficulty was that matter of the exchange of oil for construction. They did not enter into the matter of leasing land at all. There was no question [reasted] about that. The big difference between the Mammoth Oil Company contract and the Pan American contract is that the Mammoth Oil Company contract is a lease with an option for construction, and the April 25th (Pan American) contract was a direct contract for exchange involving construction. I know that the Pan American contract contains an option or provision with reference to the preferential right of leasing. That provision of the Pan American contract had not arisen and was not the subject of discussion at the time these opinions or views were expressed by the gentlemen referred to. As to the questions asked me in the course of cross-examination respecting differences in the Pan American and Mammoth contracts, I made some reference to the discussion as to whether the oil certificate should be used in framing the contract, and my objection to their use was that an oil
729 certificate, as I conceived it to be a negotiable contract, would then be at least the basis for the thought that it was a purchase and sale of oil. I have never studied the oil certificate incorporated in the Mammoth lease to determine in my own mind whether it was negotiable or not. At the time to which I refer concerning the discussion of the certificate in the Mammoth contract with Secretary Fall, if the certificate had then been formulated I did not know it. This discussion took place very early, as I remember it, while I was making tentative plans for the April 25th contract. What I said in my cross-examination about getting engineering firms to take a contract had no relation to the lease, but rather to a contract of exchange like the Pan American contract. Referring to my cross-examination in regard to the alleged fixing of prices in the mid-continent field etc., the condition in the mid-continent field at the time the lease of April 7, 1922, was entered into was there was a posted price in the midcontinent field which covered all grades of oil above 33 gravity as one group and all grades below 33 as another group, the reason for the division being that oil below 33 degrees gravity came from the Healton, Oklahoma field; that is an oil field in southern Oklahoma, in which the oil is heavier and less valuable than the general run of oil through the

midcontinent field. So to discriminate that oil they posted a separte price for everything below 33. Everything above that was put in one group, to be paid for at one price. That posted price was put up, which was the price which the company posting that would pay for any amount of oil offered. It was put up sometimes by the Sinclair Crude Oil Purchasing Company and sometimes by the Prairie Oil and Gas Company, sometimes one and sometimes the other, and there would be sometimes a difference of a few days before one would catch up with the other. Also there were posted prices put up by the Texas Company, the Producers & Refiners, the Magnolia Company and various other companies, which bought at various times. We had had the experience that the smaller companies, in order to fulfill their requirements, would offer a price higher than the posted price of the big buyers, and it would be some time, perhaps, before the big buyers would come to that price. We have had disputes in connection with Indian leases as to whether we should not require the payment of the highest price regardless of
730 who posted it, and the decision of the Department has been that the controlling price was the price which was available for the major part of the oil sold. That is, if a company wanted to get a thousand barrels a day and would pay a premium price, that that did not mean that the price of oil for the whole district was that premium price. That did not establish the market. It was a matter of fact as to what established the market.

As to the classification in the midcontinent field referred to in my cross-examination, I may state that some time after the Mammoth contract had been signed and put into operation, the oil companies in the Midcontinent field put in a new classification whereby they paid a certain price for oil, as I remember the different grades, from 33 to 36, from 36 to 38 and from 38 to 40, and above 40, and from time to time they changed that, that is, there would be a higher price for the higher gravity. Recently the two big companies there have gone back to the old basis of having simply a flat price for all midcontinental grades of oil. The classification that the companies are making is the same as the classification which was in existence at or about the time the Mammoth Oil lease was entered into. They have simply gone back to the basis which obtained at the time the Mammoth Oil contract was made.

In my cross-examination I stated that the ratio of exchange offered by Mr. Beaty was better than that given by

Mr. Sinclair. At the time that Secretary Fall and I discussed the question as to whether the Sinclair proposal was better or not as advantageous as the Beaty proposal we were expecting large wells in the northern part, at least, of Teapot Dome, and with the higher royalties we would get more oil from it even at a lower ratio of exchange, and it would bring in more fuel oil.

What I meant in my cross examination when I stated that the first papers that came to me in the Pearl Harbor matter had on them the statement that inasmuch as they were part of the war plans of the Navy they should be treated in as confidential manner as possible and that that idea was carried through into the other, was that that idea was carried over into our later discussions of any leasing of the naval reserves.

731 I refer to a letter dated December 9, 1921, addressed to the Honorable Secretary of the Interior and signed Theodore Roosevelt, Acting Secretary of the Navy, which contains the following language:

"In view of the fact that this project is embodied in the war plans of the Navy, it is requested that all matters in connection therewith be regarded in as confidential a manner as possible."

732 Recross Examination.

The method of exchange of royalty oil for storage under the provisions of the Mammoth lease is in effect the same method of exchange as in the Pan American contract, although worked out in one case by a certificate and in the other case by a credit on the books. I had in mind in my original objection that the same logical objection would apply to oil running from both the California and the Wyoming reserves unless the legal objection was as to the mere way of doing it. In the case of the California reserve the contractor agreed to construct and to credit against the cost of construction the royalty oil delivered to him. The contract of April 7 was a lease, that [it] my interpretation of it, under which the Navy leased to the Mammoth Oil Company the ground and received certain royalties and sold the royalty oil and received certain other things, including an option under which they might require construction. Under that lease the operator gave certain certificates or receipts as you might call them for the royalty oil received; and under that contract, as a matter of operation, they went ahead for a series of months before the Navy exercised its option to require

construction. The purpose of the lease was to store fuel oil in tanks to be constructed when enough royalty oil had run for that purpose; to store the fuel oil received in exchange for the royalty oil in tanks to be constructed by the operator. Under the Pan American contract of April 25th, the royalty oil was already running to the United States from certain existing leases and that royalty oil was to be used in exchange for fuel oil and construction of tanks. With regard to the letter of Acting Secretary Roosevelt to the Interior Department of December 9, 1921, that enclosed certain plans and specifications and showed where and how the Navy fuel oil was to be stored at Pearl Harbor. I, of course, understood it was not desirable for foreign nations to know the where and how of what the Navy had at Pearl Harbor. That perhaps did not affect the question of whether some lands in the United States had been leased at that time. There was no lease involved. While the matter of whether the United States, acting on behalf of the Navy, or Secretary Fall, acting on behalf of the Navy, had made a lease of certain petroleum reserves, in itself, gave no indication as to where
733 the fuel oil was to be stored by the Navy, still a change of policy in taking the oil out of the ground and putting it into storage might be held to be military information.

Deposition of ARTHUR W. AMBROSE, offered on behalf of defendants.

Direct Examination.

I reside at Bartlesville, Oklahoma, am a graduate of Stanford University where my major subjects were geology and mining. After graduating I followed the oil and gas business. I was employed for two years, or a little more, in the California Oil Fields in the position of resident geologist. I next worked in the Gulf Coast District, particularly in the state of Louisiana and Texas, and from there was transferred to—and from there went direct to the employ of the Bureau of Mines, working out of Washington, D. C., and also in the Mid-Continent and other fields. In the fall of 1921 and spring of 1922, I was Chief Petroleum Technologist, Bureau of Mines, Department of the Interior of the United States. The Chief Petroleum Technologist directs the research work in oil and gas as carried on by the Bureau of Mines, and at that time was in charge of supervision of drilling and production, computation of royalties, and so forth, on public lands. To the best of my recollection the Bureau of Mines first became actively

interested in the Naval Reserves shortly after the Executive Order of May 1921, being called upon following that order to supervise the production, and so forth, on Naval Reserves, particularly in California. I would say that it was in the late summer or early fall of 1921 that we became—the Bureau of Mines became actively interested in the Naval Reserve work. The bureau became engaged in the supervision of royalties and leases in the Naval Reserves in 1921 and by that I mean leases under the act of February 25, 1920, and also following the executive order of May, 1921, the development of Naval Reserves 1 and 2 in California.

I made a trip with Dr. Bain, Director of the Bureau of Mines in the summer of 1921 through the oil fields. We went to Bartlesville, Oklahoma, where the Bureau of Mines has an experiment station, and we made a study of the Bureau's work and reviewed some of the development in that section.

We also in the early fall of 1921 made a trip through
734 the oil fields in the Rocky Mountain region. Dr. Bain was along, and other employees of the Bureau of Mines. That was an official inspection trip. We visited the Salt Creek field and Naval Reserve No. 3. I recall meeting in Denver Mr. Brunton and also met Mr. Fisher or Fisher and Lowery. I had a discussion with Mr. Fisher in reference to Naval Reserve No. 3 and the Salt Creek field in general. Mr. Fisher took us into the Map and File room, as I recall it, and produced plate or geological maps showing the work that his field men were doing, and at that time produced information relative to the geological conditions in Salt Creek, and also Naval Reserve No. 3. At that time the Bureau was not making a special study of drainage, and the information which we collected was—or rather which we discussed was in the nature of geological information, showing the change which was indicated in the relative position, of the so-called saddle, and other features in connection with leases which were let in June 1921 in Salt Creek, and the probable development that would take place as a result of these leases—as a result of this leasing. I believe we discussed at that meeting what effect the development of the southern part of Salt Creek field would have on Naval Reserve No. 3. Mr. Fisher is a consulting geologist of the firm of Fisher and Lowry, employed for a number of years by the United States Geological Survey and I would say a very successful consulting geologist. I think he has a very good knowledge of the geological conditions and structures of the Salt Creek field and in Naval Reserve No. 3.

We had different meetings in Secretary Fall's office. My recollection is that they were subsequent to this inspection trip through the Rocky Mountain region. Admiral Robison, Dr. Bain and Secretary Fall and I were present. We discussed Naval Reserves; we discussed the development and as the time went on we became more and more interested in the subject of drainage—at least that was my particular interest—in connection with technical information which I furnished to those men, as called for, in regard to the conditions existing in the Reserves. At the start we talked about—in the early fall we talked about the drainage subject in a very general sort of a way, and as the months went on, we gathered more information in connection with development conditions existing in the fields and furnished the information on individual wells, and more detailed information, in other words. I was directed at that meeting, or meetings,
735 to give further thought and secure additional data on that subject. I studied the subject by approaching it, as I believed any petroleum geologist or engineer would do, that is by the collection and assembling of well logs, production records, a study of the water level in the sand, and a study of the structural contour maps, and any evidence or information in regard to the depletion of gas or production from wells.

I distinctly recall a trip that Dr. Bain and I made to the Pacific Coast early in January, 1922, and upon our return we reported to Secretary Fall regarding the conditions which we had found and the new development which was taking place, and which would be a factor in the determination of policy for the protection of the reserves. I am quite sure that we had a meeting after our return and before I met Mr. Sinclair, on or about February 3, 1922. I believe Dr. Bain, Secretary Fall and I were present at that meeting. I do not know whether Admiral Robison was present or not. I think he was. I cannot recall the detailed conversation, but we furnished information showing the additional development which was progressing in the southern end of the Salt Creek Field, and stated that it was the opinion of Mr. Bain and myself that in all probability the drainage at that time was not serious, but that, if the leases in the southern end of the Salt Creek Field were developed, that they would actually drain the second Wall Creek sand, and that as time went on, this drainage would become quite serious. We also believed at that time, and to the best of my recollection so stated at that meeting that we could not definitely state as to how far

this drainage would take place, but that we knew of examples where it had extended a considerable distance, and naturally must base our opinion upon conditions as nearly comparable as those which we believed existed in the northern end of Naval Reserve No. 3. Dr. Bain and I said at that meeting that we did not believe that strip leasing, or the leasing of about two rows of wells along the boundary would be a final protection to the Naval Reserve, and that if drainage did extend some distance, say a mile into the Reserve, then the additional development of two rows of wells would merely add to the mile—the distance which these wells were from the boundary line. Subsequent to the meeting in the Fall
736 of 1921, and this meeting in January or prior to the time negotiations for a lease were begun I discussed these matters with Admiral Robison. I discussed the information which we had and the situation as we say it. I commenced the draft of the contract with Mammoth Oil Company, as nearly as I can recall, about February 18, 1922, and that eventuated finally in the contract of April 7, 1922. I believe that the terms of that contract were favorable to the government, and in reference to the technical matters contained in that contract, I so advised Secretary Fall and Admiral Robison.

Cross Examination.

I know Secretary Fall made a trip in the fall of 1921 and interviewed certain of the representatives of the Bureau of Mines. I think he took up the policy in the naval reserves with me after he returned from that trip. I think the first conference at which Dr. Bain and Admiral Robison and Secretary Fall were present touching naval reserves was in late October, 1921. I remember that there was some such letter as that of October 25, 1921, from Secretary Denby to Secretary Fall, outlining a policy with regard to naval reserves. I know there were conferences in the autumn of 1921. The Wegemann report was discussed but I do not know when. I can not recall being at a conference where Secretary Fall ordered an examination of Naval Reserve No. 3 and a report on drainage by the Geological Survey. I recall that Mr. Heald of the Geological Survey did make a report which I saw some time in December, to the best of my recollection. I did not discuss the matter of drainage of Naval Reserve No. 3 with Secretary Fall between the time when he left Washington for Three Rivers and the time when he got back to Washington. I got back to Washington from a trip to the West about January 22, 1922. I can

direct you to no report giving specific consideration to the subject of drainage by Mr. Tough, but there can be found in the files some monthly letters from all of the field men in Salt Creek and also from Mr. Tough which would furnish information in that regard. I never gave any direct definite instructions to Tough to render any particular report between October 30, 1921, and January 31, 1922, touching drainage in Naval Reserve No. 3. To my knowledge Dr. Bain gave Tough no such instructions. I did not discuss Mr.
737 Heald's report with Heald. In replying to your question whether I discussed the Heald report with Secretary Fall, Admiral Robison and Dr. Bain at our meeting in late January, I think at that time we went over the various factors which had been—should be considered, and that would be a subject of consideration. I believe we did discuss the Heald report, but I can't swear that we did. I did not discuss the situation regarding drainage of Naval Reserve No. 3 with Dr. Smith, Mr. Mendenhall or Mr. Heald of the Geological Survey prior to the lease to the Mammoth Oil Company. I do not know of any of them being called in in conference prior to April 7, 1922, touching the subject of drainage affecting Naval Reserve No. 3. My report of February 18, 1922 (Pl. Ex. 23) did not express my views in full on the subject. I could write a long dissertation on the subject or drainage. I would say that report represented my conclusions. I did not consciously hold back any opinion that I entertained at that time that the Secretary ought to have on the subject. I tried to give him the truth as I saw it and all of the truth. There was nothing I said at the conference late in January, 1922, that was inconsistent with what I said in my written report of February 18, 1922. There was no further or additional information that I gave the Secretary and the others present at the conference late in January, 1922 other than what was contained in my written report of February 18, 1922, except that we had before us at the conference the maps and reports on individual wells, etc., on which the conclusions of the report are based. My recollection is that the Bureau of Mines was not asked by Secretary Fall at any time to assume official responsibility as to how much of Naval Reserve No. 3 should in January, 1922, or shortly thereafter, be leased. I never had any such responsibility. So far as I know Secretary Fall never asked me to make a formal recommendation as to what leasing should be done or how much should be done at that time. I

believe that the decision was made by Secretary Fall, so far as the Interior Department was concerned; I do not know what his relations with the Navy were. In other words, the decision was made either by the Interior Department, acting by Secretary Fall, or by the Navy Department, or by both, and the Bureau of Mines was not asked to make an
738 official recommendation on the subject, so far as I know.

I wasn't dickering with Beaty and others that were interested.

The Bureau of Mines about this time had made an estimate of the probable recoverable oil in Naval Reserve No. 3; the probable recoverable oil was divided between the first
739 Wall Creek sand and the second Wall Creek sand; approximately 50,000,000 barrels was thought to be contained in the first Wall Creek sand, and approximately 85,000,000 barrels in the second Wall Creek sand. I didn't believe there could be any drainage in the first Wall Creek sand as between Salt Creek field and Teapot Dome field of Naval Reserve No. 3. That belief was based on the fact that the drilling in Salt Creek towards Naval Reserve No. 3 had reached water rather than oil. That water when present in sufficient quantities and when there is a sufficient distance between the two reserves is a seal between the two fields and I thought that water did occur in this field. I don't know whether I specifically informed Secretary Fall that in my judgment whatever recoverable oil was in Naval Reserve No. 3 in the first Wall Creek sand was safe from drainage into the Salt Creek field; but my report and my recollection is that he must have had that information. No report on conditions there would be complete without that information. The question then resolved itself into the question, how much drainage and how imminent the drainage from the second Wall Creek sand. The big factor in that was the question where the saddle was located and what was in the saddle. My report to Secretary Fall indicated that if water were found in the saddle there would not be serious danger of drainage, whereas if oil were found in the saddle there would be serious danger of drainage. I do not recall any discussion at the conference in late January, 1922, of testing by drilling in the saddle. I do not know that the matter of whether that could be tested by drilling was discussed in my presence.

The one way I can place the conference of late January is by the fact that I was in California about three weeks,

which would—and I remember distinctly leaving on New Year's Day, January 1st, 1922; so that would put me back in Washington the 20th or 22nd, or thereabouts. I also believe that it was about February, the date of Mr. Sinclair's memorandum, that we first discussed at the Secretary's office a lease with the Mammoth Oil Company, so that it must have been between January 20th, or thereabouts, and February 3d. The conference was not held until Secretary Fall got back to Washington. I do not remember what I was requested to bring to that conference, but in presenting
our ideas we must of necessity have with us structural
740 contour maps and ownership maps, and notes of production, records, things of that sort, which would be factors. I cannot tell you at whose instance the conference was called or how long it lasted, nor what other matters were discussed besides Naval Reserve No. 3. I think that Dr. Bain reported at that conference what he had found out on the California coast and who he had interviewed. We would in those conferences discuss the whole Naval Reserve situation and not necessarily limit it to No. 3. My knowledge of those meetings is hazy. It has been practically three years ago. I know that we had several such meetings and to tell you the specific dates, the duration of the conference, etc., is beyond my memory. I don't believe I left the conference, in late January with any conclusion that it had been determined to lease up the whole of Teapot Dome. My recollection is that the first knowledge I had of that decision was when Secretary Fall told me to go to drafting a tentative lease. I did not know what negotiations took place after the conference in late January and before the time Secretary Fall told me to go to drafting.

My recollection is that Dr. Bain and I believed and expressed at the conference late in January, 1922, that the dandanger in Naval Reserve No. 3 was the drainage—the danger of drainage in Naval Reserve No. 3 was not immediately serious, but that it would become so as this development and these leases progressed. I think my written report of February 18th expressed my ideas. I did not think that the danger of drainage necessitated a lease on April 7th but that over a matter of months it would have been a factor.

As nearly as I can place the date I first met Mr. Sinclair on February 3, 1922. I can give you the details. Mr. Finney and Mr. Bain and I were in the waiting room in the Secretary's office waiting to see the Secretary. Mr. Sinclair came out and Mr. Finney and Mr. Bain knew him and intro-

duced me to Mr. Sinclair. Mr. Sinclair left the building, or the room, and Mr. Finney and Mr. Bain and I went into the Secretary's office, and it is my recollection that at that time the Secretary this memorandum of Mr. Sinclair's to us. That is my recollection, but my recollection on some of that stuff is pretty hazy, but that is what I believe, that that was the date we heard about it. Let me just correct that. It might have been that the Secretary discussed it but didn't read the memorandum. But I remember quite surely that it
741 was at that meeting—at the time I met Mr. Sinclair, that he discussed a lease with the Sinclair interests. It was at the meeting on February 3, 1922, or at some subsequent meeting shortly thereafter that Secretary Fall asked me to get up the memorandum on drainage which I rendered him on February 18 (Pl. Ex. 23). I say that because I have a graphic sheet which is dated February 18th and I know that we prepared that in connection with my report. As to when Secretary Fall gave me the instructions touching the tentative draft of a lease I think that my report to the Secretary was handed to him about February 18th, and discussed, and I believe that it was shortly thereafter that he called me to this office and introduced me to Mr. Zevely, and I again met Mr. Sinclair, and he outlined the terms of the lease. If at the conference in late January, after I had made known my views, there was any statement made by anybody as to what would be done with Naval Reserve No. 3, I do not now remember it. I am quite positive that Admiral Robison at some conference said in my presence that the Navy wanted that oil above ground and in storage rather than under ground. Admiral Robison and I had occasional conferences, but I cannot give you the dates. We had some after February 3, 1922, but we also had some before. We had several conferences; as to where I gained my impression about the wishes of the Navy, etc., it is hard to specify. If I had gathered at the conference in late January that a decision, tentative or otherwise, had been made to lease up Naval Reserve No. 3, that would have stuck in my mind. I think it is true that I did not gain any such impression from any of the conferences, and the first I know of it was when Secretary Fall told me. I know that the Navy was very much agitated, but I didn't know they had definitely decided, one way or the other, as to what was the best procedure. My principal source of information as to the attitude of the Navy, that the Navy was agitated, was Admiral Robison. On these occasional conferences that we had Admiral Robison told me that. I can not specify at which one he told me. I think Admiral

Robison was concerned about three things; I think first he wanted a pipe line out of there; I think, second, he was disturbed because of the serious loss, which I believe all impartial observers felt was talking place in California; and
742 I think also, as a third factor, he was concerned about getting a few oil storage tanks at coastal points, and I gained those impressions from occasional conferences with him.

Redirect Examination.

Referring to my report of February 18, 1922 (Pl. Ex. 23).—The report is the very brief factor—the conclusions regarding drainage. It does not amplify, in any way, the question of gas pressure, water levels, structure contours, thickness of sand, depletion of production, depletion of gas, active work on the nearby leases in the southern end of Salt Creek, and those other factors upon which you must base your conclusions for the report on the subject of drainage, and those factors were, I believe, discussed in Secretary Fall's office. As to what was specifically said on a particular or individual well or the particular examples that we used, I cannot recall. Dr. Bain and I did say to Secretary Fall that in our opinion, mere strip leasing would be merely a temporary expedient, or words to that effect.

Deposition of GERALD HUGHES, taken on behalf of plaintiff, but not offered by plaintiff, was offered by defendants.

Direct Examination.

I reside in Denver, am a practicing attorney in that city. I know Albert B. Fall. I called upon him in October, 1921, on business entirely unconnected with the Teapot Dome matter. I saw him at his office in the Interior Building, Washington, D. C. The principal subject of our discussion was the matter which I was there on, particularly. I believe at the conclusion of that statement, I asked him if the Government had come to any conclusion in respect to its policy on the Teapot Dome, and whether they intended to lease it, that if it was to be leased I would be interested in presenting an application. He replied that that matter was under most serious consideration at that time, and I believe had been referred to the Bureau of Mines, or some other department in the Interior Department, to report whether or not drainage was taking

place, and that until he was advised on that subject he
743 could not announce what he would do, and that after that he would see; but he did not indicate what he would or would not do, even if there was drainage at that time. He asked me a few questions, as I remember it, about how I was interested, or to what extent, and I told him, and he asked me if I had any connection with the Midwest Oil Interests or the Standard of Indiana. I replied, no. That led to a rather full discussion of the situation, and he said that he was not criticising those companies, but the result of their activities had been to give them a practical monopoly of the production and transportation and refining of oil in that district, and he felt that it was not to the interest of the Government or to the public to further that monopoly, and that if he decided to do anything he would like very much to do it with other parties so as to give a free outlet to the independent producers, getting better prices for the Government royalty oil, and generally he thought it would be a much healthier situation in Wyoming. I am, of course, giving you this boiled down, Mr. Roberts. It took a long while and covered many different phases, but that was the purport of his statement. I was about leaving, as I remember it, and he asked me if I had any connection with the Dutch Shell Company, and I told him I had none, and he explained then that he was also very insistent that foreign oil interests should not be further admitted into the exploitation of the American oil fields. He called my attention to the fact that they operated in Wyoming through a subsidiary company, whose name I forget. I remember at the time he interrogated me about nothing except my connections on these two points, and when I had assured him that I represented nobody but myself, in connection with personal and banking associaties and friends who had been with me in many other enterprises, and none of whom to my knowledge were interested in those other companies, he said he was very glad to know it, and he would be very glad to have me advised of the situation, and he said if I was still very much in earnest I had better put in a formal application and write him a letter so that he would have it noted in his office, on his desk, and he would let me know when
the Government had come to a conclusion concerning
744 the policy. I believe that was all that took place on the subject at that time.

Subsequent to that interview I wrote Secretary Fall a letter and I produce the reply which is as follows:

Letter, Fall to Hughes (Def. Ex. P) offered.

Department Of The Interior

Washington

Address only
The Secretary of the Interior

November 23, 1921.

Mr. Gerald Hughes,
International Trust Building,
Denver, Colorado.

Dear Mr. Hughes:—

Your personal letter of November 11, related to your express desire for oil lease within the naval withdrawal in the State of California, known locally as the "Teapot Dome", is received.

I have directed some investigation with respect to the situation of this reservation, and until they are completed can reach no determination as to whether or not it is advisable to develop lands therein. However, your letter has been placed on file for future consideration.

Respectfully,

ALBERT B. FALL, Secretary.

I think the reason for the reference in Secretary Fall's letter of November 23, 1921, to my personal letter is that when I saw Secretary he said "You had better write me a letter, and as this matter is here under my hand just mark it personal so that it will come to my desk and I will see that it is duly noted and that you are given opportunity", and I think I so noted it on the letter. Subsequent to this letter of November 23, 1921, I never had any other letter or correspondence of any kind with Secretary Fall. I saw Secretary Fall before the Teapot Dome lease was made public. My recollection is between the 15th of March and the 1st of April, 1922. I went on other matters, although the Teapot Dome matter had, according to public report, assumed some further consideration, and I had it more prominently in my mind that I had at the time of the first interview. I saw the Secretary at his office in Washington and mentioned the subject of Teapot Dome. I told the Secretary that I had heard at different places that he had determined to lease the Teapot Dome, and I also told

him I heard he was going to lease it to Mr. Sinclair,
745 and I brought up the subject that way, after taking up the other matters that I had gone there for, the matter about which I really went to Washington on. He said that that was correct, that he had about determined to lease the Teapot Dome, and that the report of the Bureau of Mines or Geologists acting for the Government was that drainage was taking place right along, and under all the conditions he thought the Government should proceed to protect itself and make a lease, and that accordingly he was in the process of negotiating a lease with Mr. Sinclair, and he outlined to me the terms of that lease as I afterwards came to know them, and it was made public. The Secretary suggested he would hear a proposition from me. After explaining the terms of this lease, which he proposed to make rather fully, and after I commented on the terms, and particularly upon the principal terms in the lease and as to the arrangement for storing oil for the Navy, which I did not understand very well, I expressed a good deal of surprise at the terms and commented on them and told him that that was the best lease that he could negotiate for the government or that I had ever heard of, and that the terms were beyond what I would be interested in, in the matter of royalties and things of that kind, and that if he could get a lease to develop that property on those terms, it seemed to me he was doing very well. The only conversation about a pipe line was as it was brought out in this lease he was proposing to negotiate. After he had outlined these terms, he said that he was trying to get the best he could, and that the matter was not concluded, that he was in touch with or negotiating with some other oil companies or operators to see if they would make better terms. I think he mentioned their names. I think it was either the Texas Company, or the Ohio Company; it was one of the large companies. I particularly remember that he kept referring to the name of an officer that was high up in that company, but I do not recall the name now; he referred to that gentleman rather than to the company, and said that they had promised to make him some further offers, and he was waiting to hear from them. The name Beaty sounds familiar, but I could not say whether that was the name he used; but it was some important officer of those companies. He said that Mr. Sinclair was a man who would insist on having control of the whole lease, that he thought at one time that he might interest several to go with him, but
746 that he had been unable to do so, and I remember of making the comment that with the expenditures con-

templated there I did not wonder that a man would want control of the whole thing. And after he had outlined that, I asked him if I was not correct that he had told me that he did not want the Standard of Indiana and the Midwest in the field up there any more, that they had a monopoly, and he said "Yes", that is right"; and I said "It looks to me like this is just another form for those same interests to get into the field up there", and he protested that that was not true, that Mr. Sinclair had no relations with him whatsoever, in fact, that they were rather antagonistic, and at least competitive, and that it would be control for Mr. Sinclair. I presume you refer to that little remark I made that it would be "Maggie in another dress". And he laughed at that. I think he said he knew Mr. Doheny very well and that he was a capable operator, and that he thought at one time that in order to get this field developed he would have to have more than one, and he thought Mr. Doheny might join with Mr. Sinclair, or with anyone else; that he would be an operator that he would like to have up there, and he said upon that subject being broached, either Mr. Doheny or Mr. Sinclair, one or both of them, said no, and he said those two men would never get along together on any one project. I think he mentioned about what he thought a pipe line would cost that would be built from the field. I think it ran something like $20,000,000, or more, twenty or twenty-five millions. I remember we commented on the length of it. I think he said something about sub-leasing by Mr. Sinclair. He said that Mr. Sinclair would undoubtedly want to control the product from the field, that he would have to put in that pipe line, and he would have to let the whole lease to him, but that there were some claimants or people that might have rights there, and that he might have to take care of them, and he would ask Mr. Sinclair if he would not straighten those matters up by giving a sublease, or some arrangement of some kind, but it was a small matter. My recollection is he said it was not over two hundred acres. I could not say who brought up the question of the Pioneer claims, whether he did or I did. They were very fresh in my mind on account of having come through Chicago where I heard a very heated discussion over
747 the Pioneer titles as affecting Mr. J. C. Shaffer, who had an interest in them, and he complained very bitterly. I repeated to Mr. Fall what Mr. Shaffer had said to me; that Mr. Shaffer had said that he had this interest in the Pioneer titles, and that some attempt had been made to turn them back to the Government without his

consent or approval, and that he was very much opposed to it. Mr. Fall then explained something about those titles to me and asked me if I knew much about them, and I told him only what I had heard through these other people, that they were old filings or locations, that they had been before the Department and he broke in and said that Secretary Payne had heard those, but had turned them down, but he had always had some serious doubt as to whether it was a correct ruling, or not. At any rate, it was up before him again, and he felt still that in making the lease that he should clear up the outstanding titles, and he was throwing that burden on Mr. Sinclair and making him do it, and that he guessed Sinclair knew what he was doing, and that he had arranged to get in those Pioneer titles which he was insisting on upon behalf of the Government. When I got through he asked me if I cared to submit an independent proposition that would be as good or better than Mr. Sinclair's, and in going over it he said he thought it would have to be for a lease on the whole, that it would have to include the pipe line, to give a free market, and the royalties and all the other main propositions, but if I could better that he would like to have me give him a proposition, and I told him in the first place I did not want a lease of that kind, and, in the second place, I was not financially able to undertake such a burden and had not come there with the intention of getting under such a proposition as that, and therefore I could not submit, and would not attempt to, an independent proposition.

Cross-Examination.

There was no suggestion of secrecy about any of this at all between Secretary Fall and myself. It was just as open as it could possibly be. The Secretary made no intimation of any apparent intention to keep these matters secret in any way. He invited me to make these propositions. It all took place in his office, people were going in and out, as I remember it, even when I was in his office. There was nothing of that kind. The only claims that were referred to in the conversation were those embraced as I recall it in the Pioneer titles. I do not recall any others being men-
748 tioned. I think that the Department has for years recognized some sort of equity in the man that first makes application for any particular piece of property and as a lawyer I knew the Department ought to and that the rule of "First come, first served" the Department is particularly anxious to follow. My recollection is that Secretary Fall referred to that and said that technically he had

his doubts about the decision that had been made, but at any rate he believed there was considerable equity in those early locations, and that before the Government would dispose of them, undoubtedly the people that held them would want to go through the court and he thought it was better to clean them up.

Deposition of LUTHER E. GREGORY, offered on behalf of defendants.

Direct Examination.

I am a civil engineer by profession and am commissioned in the Navy as a civil engineer. I now hold the rank of rear admiral in the corps of civil engineers, by reason of holding the position of Chief of the Bureau of Yards and Docks in the Navy Department. I entered the Navy in April of 1898 and have served continuously since that date. I have been Chief of the Bureau of Yards and Docks since January 5, 1922. Prior to becoming chief of the bureau I served as public works officer at various Navy Yards and stations, as officer in charge of works at those stations, work coming under the general direction of the Bureau of Yards and Docks in Washington. My duties as public works officer at each naval station would be, as I might say, a resident engineer to look out for the affairs of the Navy Department in all construction and maintenance of public works at that station; and by public works I mean all of the shore activities, excepting those which have to do with the repairing of ships and building ships. Those types of activities comprise the construction and maintenance of buildings, ways, waterfront construction, dredging, railroads, power plants, all buildings, pavements, transportation facilities, storage systems and water, coal and oil and all the other miscellaneous things that are found in shore construction at those places. All the various activities I have just enumerated come under the Bureau of Yards and Docks. As Chief of the Bureau I am in charge of all
749 the activities I have just enumerated throughout the entire naval service. Referring to the Contract of April 7, 1922 (Exhibit B of the Bill of Complaint) and the supplemental agreement of February 9, 1923 (Exhibit C of the Bill of Complaint) I am familiar with all of the construction work of the fuel oil storage at Portsmouth, New Hampshire Navy Yard, and, under my direction, the plans and specifications for the details of this work were prepared. The work which has been done under those contracts, or either of them, by the Mammoth Oil Company, or its nomi-

nee, the Sinclair Refining Company, or the sub-contractors on the job at Portsmouth, has been done under my approval, direction and supervision on behalf of the United States. The Bureau of Yards and Docks designated what portion of that work should be done by sub-contract and approved the sub-contracts. Through an agreement, or rather an understanding which was made with the Sinclair people, arrangements were made whereby that company made sub-contracts with various people who were specialists in their own particular line, to perform a large proportion of this work under sub-contracts. When I refer to "Sinclair people" I mean the Sinclair Refining Company, which is the nominee of the Mammoth Oil Company under the contract. The work done under sub-contracts was designated to be done in that manner by me as chief of the bureau; and I approved the sub-contracts that were made by the Sinclair Refining Company. I should explain that although there was nothing in the contract or the agreement that a large portion of the work was to be done by subcontract, the reason for not making that agreement in the beginning was that we thought that the Sinclair Refining Company would probably do a great deal of the work with their own force; but after the agreement was made it was felt that it would be better to have a large part of this work let out to different parties, for example, the electrical work could be done by an electrical subcontractor; the tank work could be done by subcontractors and so on. The point is that under the terms of the agreement of February 9, 1923 (Exhibit C of the Bill of Complaint) the government had the right to direct that the work be done under sub-contracts, and I, on behalf of the government, exercised that right.

The work which had been done by the Mammoth Oil Company or its nominee Sinclair Refining Company has
750 been done on land owned by the United States and under the jurisdiction of the United States Navy. As to the extent of my personal supervision over that work, I may say I have visited the work at Portsmouth, New Hampshire, but once, that was in November of 1923. I went over all the different portions of the work in person at that time, but I have at all times been represented by a civil engineer, who is a public works officer in the Navy Yard at Portsmouth, New Hampshire, and who carries out the instructions of the Bureau of Yards and Docks, as is customary. His name is Commander R. N. Warfield; he has been the representative of the United States Navy in supervising this work as it progressed. As to the character and efficiency of the work

done I may say the character of the work and the quality of the work are similar to that done under practically all of our contracts generally. It is in accordance with the requirements, and the work is excellent in character. The Navy standards of work, I might say, are usually considered somewhat higher than the work in civil life, and we think that this is fully up to Navy standards in all respects. Up to the date of the last report we had the work was about 95% complete. The approximate cost of the entire work will be in the neighborhood of $1,100,000. I am of the opinion that the value of this work is somewhat more than the actual cost to us will be, as compared to work that might have been done under a lump sum contract; it is somewhat more because of the fact that this work is being done without profit to the Sinclair Refining Company. I have had considerable experience in work of this character in supervising it for the United States. I think practically all of this kind of work that has been done for the Navy has been done by contract, with one exception, that I recall, at certain parts of the plant on the Isthmus of Panama, where the work was done for us by the Panama Canal Organization, which is essentially work done by day force. The work under the Mammoth contract has been done within the limits of the Navy Yard at Portsmouth, N. H.

I believe that the value of this plant, as compared with a plant such as would have been built under, say, a lump sum contract, is in the neighborhood of one and one quarter millions of dollars, or thereabouts. I believe the work has been done cheaper in the method that has been adopted than it could have otherwise been done by reason of two
751 things: First, that the work has been done without the Sinclair Refining Company getting any profit thereby. If the work had been done by a general contractor he would have charged not less than ten per cent for his profit, which is the customary charge; (the balance of the witness' answer was stricken out by order of the Court). Assuming that the contract had been performed by some independent contractor who had taken the contract in the ordinary way, either upon a cost plus basis or at a fixed fee for his services, and that he had not had the benefit of the organization of the Sinclair Refining Company I believe that the excess over the cost of the work done in the manner it has been done would be not less than $100,000, and might be as great as $150,000.

The work has been done at Portsmouth under specifications prepared by the Bureau of Yards and Docks of the United States Navy under my direction and supervision.

(It was then stipulated and agreed that the specifications controlling this job were No. 4802 and are the same which are in evidence in the course of the testimony of the witness Sherman, who was called by the plaintiff.)

Cross-Examination.

In stating that there was no profit in the Mammoth Oil Company contract for construction, I mean to say so far as the Navy was concerned that for this construction work we did not allow any profit. What profit there might be in other factors of the lease, of course, is something beyond my knowledge and I am not in a position to give any information on that. All I mean is that when the Navy wanted something constructed it was to pay the Mammoth Oil Company or its nominee, the Sinclair Refining Company, only the actual out of pocket expenditures of that company; but, whether there was any profit to the Mammoth Oil Company in obtaining the lease to the Teapot Dome or in the exchange features with regard to oil I have no knowledge and had nothing to do with that part of it and do not pretend to venture an opinion. The means I took to ascertain that the costs certified to my department were the actual costs at the time or whether the prices were low or high may best be answered as follows: By reason of the fact that I arranged with the Sinclair Refining Company to secure bids from subcon-
752 tractors for a number of different portions of the work. These bids were competitive in nature and the awards made in all cases were to the lowest bidder. The vouchers or statements made each month of the progess of the work were evaluated in accordance with the schedule of prices which were based upon these low bids, so that, having obtained competition and awarded the work to the lowest bidders in each of these cases, on work which has aggregated something over 85 per cent of the total volume of the contract, leads me to the firm belief that our prices are as low as they could be made. It is quite clear that for the 85 per cent done by competitive bidding the Sinclair Refining Company, or its principal the Mammoth Oil Company could have charged no contractor's profit and that the contract so provides. It is possible as to the 85 per cent the sub-contractors did include contractor's profit in their bids, but that is customary. I do not recall whether the Bureau permitted the Sinclair Refining Company to sub-contract at the request of

that company, or whether the suggestion came first from the bureau; but I do know that the agreement, which is simply a mutual agreement, not in writing, was heartily concurred in by both parties and that a course was adopted which we felt would be most productive of reduced cost to the government. I do not think that if the Sinclair Refining Company did it without subcontractors they would be so awkward about it although there was no profit to them the cost would be greater than if done by sub-contractors; but it was because of the fact that a great deal of the work was special in nature and we thought that subcontractors, who had the advantage of plant and technical employes, would produce results better than if the Sinclair people did it themselves. Nor is it exactly true that the Sinclair Refining Company has undertaken to do a thing in parts of which they were not nearly so skilled as other people in the business and that I believed it would be better to pay those other people a profit, or let the Sinclair Refining Company pay them a profit and charge it to the government than to have the Sinclair Refining Company do it itself. That is not exactly the situation because, taking as an illustration the electrical work, which was supplied in part by the General Electric Company, we thought the General Electric Company, as subcontractors,
could perform the work better than if the Sinclair
733 Refining Company employed electricians and attempted to do this technical branch of the work. I am mentioning the electrical work simply as an illustration. It was a small portion of the work. I do not consider that the difficulty was in hiring an oil company to do an electrical job because the alternative would have been to have made a general contract which is our custom under appropriations made by Congress. As a rule we make a certain contract for a certain completed plant, and we did not want to divide up into a lot of major contracts covering the different branches of the work involved in the construction.

I have had pretty long [expereince] in letting contracts. In my experience a contract has not been let for Navy construction to an oil company.

Redirect Examination.

I had nothing to do with the letting of the contract of February 9, 1923 (Exhibit C of the Bill of Complaint). Assuming that I had let the contract to an independent contractor I would have expected him to add a commission for his services over and above any profits that might have been included

by the subcontractors in their contracts. Such is the custom. During the progress of the work I was familiar in a general way with the prices at which the Sinclair Refining Company was able to purchase materials, as compared with prices to contractors generally in the open market, but I have no details here at the present time.

Recross Examination.

When I said in my redirect examination that I had nothing to do with the making of the contract of February 9, 1923, I meant that it followed from the contract of April 7th and it was the business of my department to draw the specifications to conform to the contract as it had been made with the Mammoth Oil Company. I should say, of course, we were familiar with anything that involved the preparation of plans and specifications for construction work, but as to the contract proper, I had nothing to do with that. In other words, my first touch with the matter came when the technical services of my bureau were requested to prepare and lay
734 out what it was that the Navy wanted, physically on the ground. I was not consulted, and had nothing to do with the contract of April 7, 1922. I had nothing to do with any of the contracts except the preparation of plans and specifications for the construction work.

Testimony of JULIAN L. LATIMER, a witness on behalf of the defendants.

Direct Examination.

I am Judge Advocate General of the Navy. My rank is that of Rear Admiral. At the direction of the Secretary of the Navy I appear here in the place of the Secretary, in response to a subpoena served upon him. That subpoena reads as follows:

"You will bring with you letter dated September 15, 1920, addressed to the Secretary of the Navy or the Chief of Operations of the United States Navy, signed by Albert Gleaves, Rear Admiral of the United States Navy; cablegram or wireless message dated on or about January 26th or 27th, 1921, addressed to the Secretary of the Navy or Chief of Operations of the United States Navy, signed by Albert Gleaves, Rear Admiral of the United States Navy; letter dated January 26th or 27, 1921, addressed to the Secretary of the Navy or Chief of Operations, signed by Albert Gleaves, Rear Admiral of the United States Navy; report signed by L. C. Richardson, Commander of the United States Navy, U. S. Albany,

transmitted with said letter; circular or bulletin issued some time in June or July, 1921, containing excerpts of letter of Rear Admiral Gleaves, dated September 15, 1920; also all cablegrams, wireless messages, letters or other reports signed by Albert Gleaves, Rear Admiral of the United States Navy, between September 15, 1920 and March 1, 1921."

I have a portion of the letters and messages called for in the subpoena. I have not produced all of them. In answer to the question why I have not produced all of them I desire to read the certificate of the Secretary of the Navy, as follows:

In re subpoena (duces tecum) directed to Curtis D. Wilbur by the Honorable T. Blake Kennedy, Judge of the District Court of the United States for the District of Wyoming on the 13th day of January, 1925.

Curtis D. Wilbur, Secretary of the Navy, hereby cer-
755 tifies that he has examined the above mentioned subpoena (duces tecum) and the paper therein described and that all of the papers described in the first five sentences thereof and certain of the papers described in the last sentence of the said subpoena (duces tecum) consisting of forty-five (45) despatches, fifty-one (51) letters and the accompanying endorsements and enclosures, fifty (50) reports and five memoranda addressed to the Secretary of the Navy by Albert Gleaves, Rear Admiral, United States Navy, between September 15, 1920 and March 1, 1921, all of the aforesaid papers being found among the official files and records of the Department of the Navy, are of a confidential nature, containing matters of importance to the Nation, the disclosure of which would in his opinion be injurious to the public interests. And the said Curtis D. Wilbur as Secretary of the Navy therefore respectfully represents that he is not at liberty to furnish to the Court the aforesaid confidential papers and prays that this honorable court will hold him excused from complying with the aforesaid subpoena (duces tecum) in respect of the aforesaid papers forming part of those described in the said subpoena (duces tecum).

The remaining documents described in the above mentioned subpoena (duces tecum) are forwarded under the seal of the Department.

(Signed) CURTIS D. WILBUR,
Secretary of the Navy."

I also read the following certificate of the Secretary of State:

"This is to certify that I have read the statement of the Honorable Curtis D. Wilbur, Secretary of the Navy, in response to the subpoena (duces tecum) directed to him by the Honorable T. Blake Kennedy, Judge of the District Court of the United States for the District of Wyoming on the 13th day of January, 1925, in the case of the United States of America, Plaintiff, vs. Mammoth Oil Company, a corporation, etc., et al, Defendants, (No. B. 162). The Department of State also caused an examination to be made of the papers described in the first five sentences of the said subpoena (duces tecum) and certain of the papers described in the last sentence of the said subpoena (duces tecum) consisting of forty-five (45) despatches, fifty-one (51) letters with accompanying endorsements and enclosures, fifty (50) reports and five (5) memoranda addressed to the Secretary of the
756 Navy or the Chief of Naval Operations of the United States Navy by Albert Gleaves, Rear Admiral, United States Navy, between September 15, 1920, and March 1, 1921. I concur in the view of the Secretary of the Navy that the disclosures of the contents of those papers would be incompatible with the public interest.

(Signed) FRANK B. KELLOGG
Secretary of State.

After argument the Court ordered that the witness be excused.

Withdrawal Order of September 27, 1909 (Def. Ex. Q) offered.

September 27, 1909.

The Honorable,
The Secretary of the Interior.

Sir:—

In accordance with your orders I have the honor to submit the following recommendation which covers approximately 3,041,000 acres of which the larger part is probably private land and not affected by this withdrawal.

Temporary Petroleum Withdrawal No. 5.

In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection,

filing, entry, or disposal under the mineral or non-mineral public land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination.

. . . . . .

Wyoming

(Sixth Principal Meridian)

T. 42 N., R. 78 W., Secs. 25 to 36 inclusive;

T. 42 N., R. 79 W., Secs. 25 to 36 inclusive;

T. 41 N., R. 78 W.

T. 41 N., R. 79 W.

T. 40 N., R. 78 W.

T. 40 N., R. 79 W.

T. 40 N., R. 80 W. Secs. 1, 12, 13, 24, 25 and 36;

T. 39 N., R. 78 W.

T. 39 N., R. 79 W.

T. 39 N., R. 80 W. Secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36;

T. 38 N., R. 78 W. Secs. 1 to 6 inclusive.

T. 38 N., R. 79 W. Secs. 1 to 6 inclusive;

T. 38 N., R. 80 W. Secs. 1 and 2 inclusive;

Very respectfully,
(Sgd) H. C. RIZER,
Acting Director.

Approved September 27, 1909 and sent to General Land Office.

(Sgd) FRANK PIERCE,
Acting Secretary.

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757 Withdrawal Order, approved June 18, 1910 (Def. Ex. R) offered.

Department of the Interior
United States Geological Survey
Washington, June 16, 1910

The Honorable,
The Secretary of the Interior.

Sir:

On November 10, 1909, an area of approximately 522,960 acres in the Salt Creek region, Wyoming, was withdrawn

from agricultural entry on recommendation of the Commissioner of the General Land Office on account of alleged oil character of the land. On September 27, 1901, following field examination by a special agent, approximately 92,160 acres of this area were restored. On April 1, 1908, an additional restoration was made, leaving an outstanding withdrawal covering 173,530 acres. On July 26, 1909, you approved a recommendation of the Commissioner that this withdrawal be continued pending examination by the Geological Survey. As this examination was not completed at the time of the initiation of the policy of withdrawing oil lands from all disposition in aid of proposed legislation, this area was included in Temporary Petroleum Withdrawal No. 5, approved by you on September 27, 1909.

As a result of field examination by the Geological Survey in this area, I find that the following lands included in this withdrawal are not valuable for oil and accordingly recommend their restoration. This recommendation of restoration includes 139,135 acres.

Restoration of Lands included in Temporary Petroleum Withdrawal No. 3.

Sixth Principal Meridian.

T. 38 N., R. 78 W.,

Sec. 1, all;

Sec. 4, SE¼ of NE¼, E½ of SE¼, Lots 1 and 2;

Sec. 4, S½ of NW¼, SW¼, SW¼ of SE¼, Lot 4;

Secs. 5 and 6, all;

T. 39 N., R. 78 W.,

Sec 1, all;

Sec. 2, all;

T. 39 N., R. 78 W.,

Sec. 3, all;

Sec. 4, E½, E½ of W½,

Sec. 9, E½, E½ of W½,

Secs. 10 to 15 inclusive;

Sec. 16, NE¼, N½ of SE¼, SE¼ of SE¼,

Sec. 22, E½, E½ of NW¼, NW¼ of NW¼,

Secs. 23 to 26 inclusive;

Sec. 29, SW¼ of SW¼,

Sec. 30, E½ of SW¼, W½ of SE¼, SE¼ of SE¼, Lots 2, 3 and 4;

Sec. 31, all;

Sec. 32, SW¼ of NE¼, W½, SE¼;

Sec. 33, SW¼ of SW¼;

Sec. 35, E½, E½ of NW¼, NW¼ of NW¼, NE¼ of SW¼,

Sec. 36, all;

Sec. 27, E½ of NE¼.

T. 40 N., R. 78 W.,

Secs. 1 to 5 inclusive;

Sec. 6, S½ of NE¼, SE¼ of NW¼, NE¼ of SW¼, SE¼, Lots 1, 2 and 3;

Sec. 7, NE¼, N½ of SE¼, SE¼ of SE¼,

Secs. 8 to 17 inclusive;

Sec. 18, E½ of NE¼, NE¼ of SE¼;

Sec. 20, E½, E½ of W½, NW¼ of NW¼,

Secs. 21 to 28, inclusive;

Sec. 29, NE¼, E½ of NW¼, N½ of SE¼, SE¼ of SE¼,

Sec. 32, NE¼ of NE¼,

758 Sec. 33, N½, N½ of SW¼, SE¼ of SW¼, SE¼,

Secs. 34 to 36, inclusive.

T. 41 N., R. 78 W.,

Secs. 1 to 30 inclusive;

Sec. 31, N½, N½ of SE¼, SE¼ of SE¼;

Secs. 32 to 36 inclusive.

T. 42 N., R. 78 W.,

Secs. 25 to 36 inclusive.

T. 38 N., R. 79 W.,

Secs. 1 to 6 inclusive.

T. 39 N., R. 79 W.,

Sec. 4, $SW\frac{1}{4}$ of $NW\frac{1}{4}$, $W\frac{1}{2}$ of $SW\frac{1}{4}$, $SE\frac{1}{4}$ of $SW\frac{1}{4}$, Lot 4;

Secs. 5 to 8 inclusive;

Sec. 9, $W\frac{1}{2}$, $SW\frac{1}{4}$ of $NE\frac{1}{4}$, $SE\frac{1}{4}$,

Sec. 10, $SW\frac{1}{4}$ of $SW\frac{1}{4}$,

Sec. 14, $SW\frac{1}{4}$ of $SW\frac{1}{4}$,

Sec. 15, $SW\frac{1}{4}$ of $NE\frac{1}{4}$, $NW\frac{1}{4}$, $S\frac{1}{2}$,

Secs. 16 to 22 inclusive;

Sec. 23, $SW\frac{1}{4}$ of $NE\frac{1}{4}$, $NW\frac{1}{4}$, $S\frac{1}{2}$,

Sec. 24, $SW\frac{1}{4}$ of $SW\frac{1}{4}$,

Sec. 25, $NW\frac{1}{4}$ of $NE\frac{1}{4}$, $S\frac{1}{2}$ of $NE\frac{1}{4}$, $NW\frac{1}{4}$, $S\frac{1}{2}$,

T. 39 N., R. 79 W.,

Secs. 26 to 36 inclusive.

T. 40 N., R. 79 W.,

Sec. 2, Lots 1 and 2,

Sec. 3, $W\frac{1}{2}$ of $W\frac{1}{2}$,

Secs. 4 to 9 inclusive,

Secs. 16 to 21 inclusive;

Sec. 28, $N\frac{1}{2}$ of $NE\frac{1}{4}$, $SW\frac{1}{4}$ of $NE\frac{1}{4}$, $W\frac{1}{2}$, $W\frac{1}{2}$ of $SE\frac{1}{4}$,

Secs. 29 to 32 inclusive;

Sec. 33, $NW\frac{1}{4}$, $W\frac{1}{2}$ of $SW\frac{1}{4}$.

T. 41 N., R. 79 W.,

Secs. 1 to 32 inclusive,

Sec. 35, $N\frac{1}{2}$, $NE\frac{1}{4}$ of $SE\frac{1}{4}$,

Sec. 36, $N\frac{1}{2}$, $SW\frac{1}{4}$, $W\frac{1}{2}$ of $SE\frac{1}{4}$.

T. 42 N., R. 79 W.,

Secs. 25 to 36 inclusive;

T. 38 N., R. 80 W.,

Sec 1, all;

Sec. 2, all;

T. 39 N., R. 80 W.,

Sec 1, all;

Sec. 2, all;

Secs. 11 to 14, 23 to 26, inclusive;

Sec. 35, all;

Sec. 36; all;

T. 40 N., R. 80 W.,

Sec 1, all;

Sec. 12, all;

Sec. 13, all;

Sec. 24, all;

Sec. 25, all;

Sec. 36, all;

The same investigation indicates that the following lands not included in existing withdrawals are valuable for oil and I therefore recommend the following withdrawal including 3,600 acres:

Temporary Petroleum Withdrawal No. 17.

In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the following list are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or nonmineral public land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination:

Sixth Principal Meridian, Wyoming.

T. 38 N., R. 78 W.,

Sec. 9, E½ of NE¼, NE¼ of SE¼,

Sec. 10, all;

Sec. 11, W½ of NE¼, NW¼, S½,

Sec. 14, all;

Sec. 15, E½, NW¼ N½ of SW¼, SE¼ of SW¼,

Sec. 22, NE¼, NE¼ of NW¼, E½ of SE¼;

Sec. 23, all;

Sec. 26, NW¼ of NE¼, N½ of NW¼.

The effect of this restoration and additional withdrawal
759 will be to decrease the area now withdrawn in Wyoming in aid of proposed legislation affecting the use and disposition of the petroleum deposits of the public domain to 255,461 acres.

Very respectfully,

(Sgd) GEO. OTIS SMITH,
Director.

Approved June 18, 1910, and sent to General Land Office.

(Sgd) R. A. BALLINGER.

Defendants offered letter of April 12, 1922, Secretary Fall to Senator LaFollette, together with a memorandum attached thereto, which are as follows:

The Secretary of the Interior

Washington, April 12, 1922.

My dear Senator LaFollette:

By reference from the State Department, I have your letter of April 6, 1922, in which you request that there be sent you copies of the following orders:

"Orders creating naval petroleum reserves, Nos. One (September 2, 1912 and Two (December 13, 1912) in the State of California, and Number Three (April 30, 1915) in the State of Wyoming.

"Orders transferring the naval petroleum reserves (April 1921) from the Navy Department to the Department of the Interior.

"Orders creating the Naval coal reserves in the Territory of Alaska, as provided for in section 2 of an act to provide for the leasing of coal in the Territory of Alaska, etc. approved October 20, 1914 (38 Stat. 741).

"Order for transferring the naval coal reserves (March, 1922) from the Navy Department to the Department of the Interior."

I take great pleasure in handing you herewith copies of all the said orders referred to.

With reference to your second request, in the order in which the same are above quoted—that is to say, the order transferring the matters affecting the naval petroleum reserves from the Navy Department to the Department of the Interior:

You are of course familiar with the laws of Congress of the United States affecting the naval reserves, which laws are referred to in the Executive Order of the President directing the Secretary of the Interior to take over the administration of these naval reserves. I call your attention, however, to section 18 of the act of February 25, 1920, wherein certain provisions are made with reference to the duties of the Secretary of the Interior and the President of the United States respectively, concerning lands in such reserves.

Under the terms of the act itself no applications of private individuals for leases upon such withdrawn lands classified as naval reserves could be entertained except upon the basis of some claim of title or equity to such particular lands existing prior to February 4, 1920 making appropriations for the naval service, etc., under the appropriation for "Investigation of fuel oil and other fuel," the following language is found:

"Provided, That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an act of Congress approved February 25, 1920 etc., to conserve, develop, use, and operate
760 the same in his discretion directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof and those from all royalty oil from the lands in the naval reserves, for the benefit of the United States."

Some disappointment has been felt by the Navy Department in view of court decisions and departmental rulings and decisions affecting large areas particularly in naval reserves Nos. 1 and 2. It had become apparent that, as a

result of drilling upon privately owned lands, titles to which had been confirmed or leases to others of which had been made under the terms of the act of February 25, 1920, the lands adjoining, and, in fact, the lands throughout the entire area of the reserves, were being rapidly drained of oil, particularly through the lessening of gas pressure in such areas. The Navy finally sought to lease offset wells for the purpose of securing directly the oils thereunder, and in some of such attempts conflicts at once arose as to prior claims claimed upon the same lands sought to be leased by the Government, title to which had not finally been determined. Taking all these matters into consideration, the Secretary of the Navy took the matter up with the President of the United States. Being fully informed in the premises, and being advised by his authority so to do, the President of the United States by the Executive Order, a copy of which I am enclosing, directed the Secretary of the Interior to take over the entire administration of such lands in consultation and cooperation with the Secretary of the Navy. Had it been necessary for the President to rely upon any other or further authority than is contained in the two acts cited he might have based his order to the Secretary of the Interior upon the terms of what is known as the Overman Act, which had not expired at the date of such Executive order.

There were outstanding claims, whether based upon undeniable legal title or upon well-recognized equities, on file in the Department of the Interior affecting large portions of the lands in each of the Naval reserves mentioned.

The Navy Department and the Interior Department have been in close cooperation and have been endeavoring, as they saw it, to carry out the purposes for which these reserves were created, i. e., not the sale of oil for commercial or other purposes, but the securing of a reserve of fuel oil for naval purposes. Such has been, is, and will be the purpose of the two Departments.

I am inclosing you copy of memorandum prepared by this department which has not been given publicity, but has been prepared for the information of officials both of the Interior and of the Navy Departments. Of course, there is no objection to the widest publicity to be given.

You will, of course recognize the fact that full publicity cannot be given of the details of the working out of these plans, except by the consent of the President of the United States, as the same involve military policies. I may reiterate

to you, however, that the entire purpose is not to sell or dispose of any oil, nor, unless directed by Congress so to do, to use the oils from these naval reserves, but simply to preserve them above ground if they can not be properly conserved and preserved within the soil.

* * * * * * * * * * * * *

I am in hopes that the documents herewith inclosed with this explanatory statement will give you the information which you have requested.

With great respect, I am,

Very sincerely yours,

(Signed) ALBERT B. FALL,
Secretary.

Hon. Robert M. LaFollette,
United States Senator.
Inclosure.

"This contract is in the form of a lease, with graduated royalties, for the entire area of Naval Reserve No. 3 in Wyoming.

It is based upon the necessity for the preservation of the oils, the property of the Navy, by the extraction of the same from the ground and storing where losses will not be incurred.

The contract provides for the drilling of at least 20 wells within a limited time.

761 It provides for the immediate construction of a pipe line from the field to a junction with the present construction pipe lines at or about Carrollton, Mos., a distance of approximately 1,000 miles.

It provides for the exchange of crude for fuel oils, the latter for naval purposes, at our option rate of exchange based upon Salt Creek prices of Mid-Continent field prices for crude oil.

It provides for the delivery of one barrel of naval specified bunker A oil at any point as named in the contract from Guantanamo, Cuba, to the northeast corner of the United States at the rate of one barrel of fuel oil for one barrel of crude.

It provides for a line of credit under which in exchange for the crude oil ample storage for all the product shall be provided without any cash outlay at any point fixed by your department on the Gulf Coast, or Guantanamo, Cuba, and north on all the Atlantic coast of the United States.

It provides that the lessee shall at such or any other points, at its own expense, and without obligation upon the part of the Navy, provide gasoline, kerosene, lubricating and cylinder oil, etc., at market prices, so that the Government can, if it desires to do so, take such additional products.

It provides that after the first 18 months, the Navy may give notice that it desires cash in lieu of fuel oil for its crude products, based upon the competitive prices in the Mid-Continent and Salt Creek field.

It provides prior right of transportation for all governmental oils from the Teapot Dome and the Salt Creek field, even prior to the uses of said pipe line for the lessee."

It was stipulated and agreed between counsel for all the parties that the letter and memorandum just offered were caused to be deposited by Albert B. Fall, then Secretary of the Interior, in the United States Mail at Washington, D. C. on April 12, 1922, and were duly received by Robert M. LaFollette, at the City of Washington in due course of mail.

Defendants then offered in evidence letter of August 16, 1921, Theodore Roosevelt to Fall (Def. Ex. S). Said letter reads as follows:

Navy Department

Washington

15 August 1921.

My dear Mr. Secretary:

I am in receipt of your letter of 30 July, 1921, in which you requested the Navy Department to allot to the Department of the Interior the sum of $5,500 or for the remainder of this fiscal year to provide for the protection of the interest of the Navy Department and of the Government in the Naval Reserves. In view of the fact that the Bureau of Mines has no funds available for this purpose at the present time, I

am taking the necessary steps to have transferred to your Department the sum requested.

Sincerely yours,

(Sgd.) THEODORE ROOSEVELT
Acting Secretary of the Navy.

Hon. Albert B. Fall,
Secretary of the Interior,
Department of the Interior,
Washington, D. C."

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762 Defendants offered in evidence memorandum dated dated October 3, 1921, (Def. Ex. T), reading as follows:

Memorandum For The Paymaster General.

Mr. Wegemann of the Mid-West Refining Company called in today and had an interview with the Paymaster General concerning the drilling of offset wells on the Naval Reserve located in Wyoming. The Paymaster General directed that I accompany Mr. Weggamen to the Bureau of Engineering where he interviewed Commanders Stuart and Shafroth concerning this matter.

Mr. Waggeman was formerly with the Geological Survey and he states that he is one of those who originally recommended the setting aside of the Naval Reserve in Wyoming. At the time he recommended this action, he was under the impression that this Reserve could be held intact indefinitely. Further prospecting has recently disclosed the fact that part of this Reserve is being drained by the wells of the Mid-West Refining Company and he came to Washington to report this to the Navy Department.

Mr. Waggeman has also interviewed Assistant Secretary Finney and Mr. Mendenhall of the Department of Interior concerning the drilling of offset wells in this Naval Reserves.

E. A. COBEY.

Copy to: Commander Stuart, Bureau of Engineering."

It was thereupon stipulated and agreed by counsel that E. A. Cobey was at the date of the above memorandum, [and] Commander of the United States Navy employed in the Bureau of Supplies and Accounts.

Defendants then offered in evidence letter of April 13, 1922, Secretary Fall to President Harding (Def. Ex. U), reading as follows:

Department of the Interior

Washington, April 13, 1922.

My dear Mr. President:

On April 6, Senator LaFollette, of Wisconsin, addressed a communication to the Secretary of State requesting copies of all Executive orders, etc., relating to the naval reserves Nos. 1, 2 and 3, and the coal operations in Alaska. By reference this letter was handed me yesterday.

For your information I am handing you copy of my reply sent directly to Senator LaFollette with copies to the Secretary of State and the Secretary of the Navy. You will note that I have very frankly stated the policies which are being carried out by the Navy and the Interior Department jointly with reference to these matters.

You will further note that I have stated that the details as to the handling of naval oils will be withheld unless permission may be given by the Commander in Chief of the Army and Navy of the United States. Of course the matter of the process by which we are obtaining storage, etc., and the location of the storage, the contracts for the same, and in fact the plans of the Navy as they are being worked out by myself and Secretary Denby are military plans and, in my judgment, should not be given to Senator LaFollette or anyone else.

ALBERT B. FALL.

The President,
The White House.

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763 Stipulated that the copy accompanying the above letter was copy of the letter dated April 12, 1922, from Fall to LaFollette, appearing above.

Defendants offered in evidence letter dated April 24, 1922, from Finney to La Follette (Def. Ex. V.), reading as follows:

Department of the Interior

Washington, April 24, 1922.

Hon Robert M. LaFollette,
United States Senate.

My dear Senator:

Replying to your letter of April 22, I have to advise you that I am not informed as to the legal opinion upon which the President based his order of May 31, 1921 (order No 3474).

The history of the matter, so far as I am informed concerning it, is set out in Secretary Fall's letter to you of April 12, 1922. Whatever has been done with respect to any of the naval reserves under said order has been done in cooperation and with full concurrence of the Secretary of the Navy. The two departments are working in the closest harmony, with the single object of handling these reserves and the oils therein in such manner as to secure the largest benefit to the Navy and to carry out the intent of the applicable acts of Congress.

Answering your request that you be advised 'under what law' the Secretary of the Interior is at present leasing oil lands in the naval reserves I have to state:

The general provisions of the act of February 25, 1920 (41 Stat. 437) are not applicable to lands within naval reserves. However, the second, third, and fourth provisos to section 18 of said Act and section 18a are applicable to said reserves. Under the provisions of section 18 mentioned, leases upon producing wells in naval reserves have been granted by the former and present Secretaries of the Interior, and a few settlements were made under the provisions of Section 18Z. A number of leases, particularly in naval reserve No. 2, have been granted under the second proviso to Section 18. Lands on which there are no pending claims or applications for permits or leases under the provisions of the act of February 25, 1920, supra, have been leased under the act of June 4, 1920 (41 Stat. 813), as set out in Secretary Fall's letter to you of April 12, 1922.

I may state in concluding that every lease which issues through this department receives the consideration of its legal officers, and of course the issuance involves the conclusion that full authority for the action taken exists.

Sincerely yours,

E. C. FINNEY,
Acting Secretary."

It was admitted not as proofs of the facts therein stated, but merely to prove the fact that such a communication was made on the date of said letter.

Evidence of Defendant Sinclair Crude Oil Purchasing Company.

The only matter offered by defendant Sinclair Crude Oil Purchasing Company consisted of the following stipulation:

"It Is Hereby Stipulated And Agreed by and between the parties hereto for the purpose and only for the pur-
764 pose of the trial of this cause on bill, answers and proofs, that the witnesses, books, records and files of defendant Sinclair Crude Oil Purchasing Company if offered in evidence at the trial of this suit would show that during the month of January, 1923, said defendant purchased from Mammoth Oil Company all of the steel oil storage tanks then erected or being erected upon the land in controversy herein and that said defendant assumed the performance of the contracts theretofore entered into by said Mammoth Oil Company with the tank construction companies and other contractors for the construction of said tanks and necessary equipment, fire guards and other appurtenances to said tanks and duly paid to said Mammoth Oil Company and said contractors for said tanks then erected and for the completion and construction of the oil storage tanks, fire walls, fire guards and other appurtenances to said tanks and that by virtue thereof said defendant Sinclair Crude Oil Purchasing Company became and is now the owner of seventeen (17) steel oil storage tanks and the contents thereof located upon portions of Section 27 and 34 in Township Thirty-nine (39) North, Range Seventy-eight (78) West, being more specifically described and numbered as follows:

Tanks Numbered 2004, 2005, 2006, 2007, 2008 and 2009, all located upon the South Half (S½) of said Section 27;

Tank numbered 2012, located upon the South boundary line of said South Half (S½) of said Section 27;

Tanks Numbered 2010, 1011, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020, all being upon the East Half (E½) of said Section 34.

Each and all of said tanks being of a capacity of eighty thousand (80,000) barrels of crude oil.

That said defendant has heretofore invested in the purchase, construction and erection of said seventeen (17) tanks and fire walls, fire guards and other equipment and appurtenances thereto the sum of approximately $567,892.

That said tanks have been used for the storage not only of the oil produced upon the premises in controversy herein but also for the storage of royalty oil purchased by said defendant from the plaintiff herein being royalty oil produced on Government lands in Salt Creek Field adjacent to the premises in controversy herein and that it was necessary to store and conserve said oil produced upon the lease in controversy by the defendant Mammoth Oil Company to await the completion of pipe lines for the transportation of said oil and that said defendant Sinclair Crude Oil Purchasing Company purchased said tanks and caused them to be completed.

By executing this stipulation the above named plaintiff does not admit that said testimony is material, relevant to the issues in this suit or admissible therein; and does not waive its right to object on said grounds but this stipulation is executed for the purpose of dispensing with the necessity of producing and offering in evidence detailed testimony that would otherwise be necessary to prove the facts covered by said stipulation.

It is further expressly agreed that plaintiff shall not be bound by the amount of investment herein stated in the carrying out of any decree or accounting which may be made or ordered by the Court herein; but plaintiff shall have the right to demand specific proof of the items constituting the investment above referred to if at any stage of the proceedings said defendant Sinclair Crude Oil Purchasing Company should attempt to bring the same into any account stated between the parties to this issue, to set off the same, or to recover affirmatively against the plaintiff the amount of such investment or any portion thereof.

765 The Court overruled plaintiff's objection to the relevancy of said stipulation and granted plaintiff an exception.

Evidence of defendant Sinclair Pipe Line Company.

The only evidence offered on behalf of defendant Sinclair Pipe Line Company, was a stipulation which reads as follows:

It Is Hereby Stipulated And Agreed by and between the parties hereto, for the purposes of the trial of this cause on bill, answers and proof only, and for no other purpose:

1. That defendant Mammoth Oil Company did, on November 15, 1922, submit a bid for the purchase of certain royalty oil accruing to the United States from Government leases in the Salt Creek Field, Wyoming:

2. That said Mammoth Oil Company did by letter of December 15, 1922, to Albert B. Fall, Secretary of the Interior, agree that in the event of its said bid of November 15, 1922, being accepted, the pipe line provided for in the lease contract of April 7, 1922, should have a capacity of 40,000 barrels per day instead of 25,000 barrels per day and that operations for the construction thereof should be commenced within sixty days after the execution of the proposed contract for said royalty oil, irrespective of whether or not 20,000 barrels of oil per day should have been developed in Naval Petroleum Reserve No. 3; and did request that if its said bid was accepted, a contract for the sale of said royalty oil should be executed with Sinclair Crude Oil Purchasing Company; and did inform said Secretary of the Interior that Sinclair Pipe Line Company, or a subsidiary thereof or a corporation controlled by it had assumed the obligations of said Mammoth Oil Company under said lease contract of April 7, 1922 to construct said pipe line:

3. That by letter of December 18, 1922 said Secretary of the Interior did notify Mammoth Oil Company that its bid was the highest and best bid for said royalty oil and that he was prepared to accept the same, and did agree to accept said bid and to substitute Sinclair Crude Oil Purchasing Company in said proposed contract of sale for said Mammoth Oil Company and also to substitute Sinclair Pipe Line Company for said Mammoth Oil Company for the construction of the pipe line called for under the lease contract of April 7, 1922, provided and upon condition that Mammoth Oil Company would contract to give the option to the United States to require Mammoth Oil Company to sell or procure the sale to the United States of a number of barrels of fuel oil equal to the number of barrels of royalty oil delivered by the United States to the Sinclair Crude Oil Purchasing Company:

4. That Mammoth Oil Company by letter of December 19, 1922, addressed to the said Secretary of the Interior, accepted the condition last above recited;

5. That Sinclair Pipe Line Company entered into an agreement of December 20th, 1922, a true copy of which is attached to the answer of said defendant filed herein, and performed the covenants and obligations imposed upon it by said agreement of December 20th, 1922 and constructed a pipe line in accordance with the terms thereof and invested and expended in building and equipping said pipe line, pump stations, tanks and other appurtenances and equipment necessary to be built and operated in connection therewith the sum of approximately $21,000,000, which pipe line system has a capacity of 40,000 barrels per day during the summer months and extends from the lands described in the bill of complaint in Natrona County, Wyoming, to a point or connection on the main pipe line system owned and operated by this defendant near Freeman, Missouri, which system in now fully completed and has been in operation transporting oil therein and through the same since August, 1924.

6. That of said sum of approximately $21,000,000 invested by said defendant in said pipe line system approximately the sum of $768,000 has been and was invested by said defendant in building a main pump station together with the pumps and machinery located therein and used in connection therewith and bunker houses, warehouses, offices, boiler houses, reservoir and appurtenances thereto and used on connection therewith upon the property in controversy herein, being upon the NW¼ of Section 27, Township Thirty-
766 nine (39) North, Range Seventy-eight (78) West and upon the NE¼ of Section 28 of said Township and Range and in addition thereto its main pipe line from said pump station located upon said Section 27 as aforesaid and running in a southerly direction across the land herein involved and in addition thereto the four steel storage tanks, two each of 55,000 barrels capacity, each numbered 832 and 833 and two of which are numbered 834 and 835 and each of 64,000 barrel capacity, all four located on the NW¼ of said Section 27, hereinbefore described, which tanks are used and necessary to be used in the operation of said pump station and main pipe line herein mentioned.

7. That said pipe line since its completion has been and is being used as a common carrier pipe line for the transportation of oil produced upon the land in controversy herein and royalty and other oil from other Government lands in what is known as the Salt Creek Field adjacent to the premises in controversy.

8. It is further expressly understood that the plaintiff shall not be bound by the valuation herein placed upon the said pipe line or upon the pumping station and other improvements which may be upon the property described in the bill of complaint in the carrying out of any decree or accounting which may be made or ordered by the court herein; and it is agreed that plaintiff shall have the right to demand specific proof of the items constituting the investments above referred to if at any stage of the proceedings said Defendant Sinclair Pipe Line Company should attempt to bring the same into any account stated between the parties to this cause, to setoff the same or to recover affirmatively against the plaintiff the amount of such investment or any portion thereof.

9. The plaintiff in executing this stipulation through its attorneys of record does not waive any right to object to the materiality or relevancy to the issues of this suit of the facts herein recited but it is only intended hereby to dispense with the necessity of introducing the witnesses, books, records and files that will be necessary to prove the facts herein stated reserving the right to object to such evidence as being immaterial and irrelevant to the issues the same as though the witnesses were called and the books, records and files were offered in evidence by said defendant.

The Court overruled the objection of the plaintiff to the relevancy of the facts set forth in the foregoing stipulation and granted plaintiff an exception to its ruling.

Rebuttal Evidence of Plaintiff.

Deposition of PATRICK H. KELLEY, offered on behalf of plaintiff.

I reside at Lansing, Michigan, and am a lawyer by profession. I was a member of Congress from March 4, 1912, to March 4, 1923. I was a member of the House Committee on Naval Affairs, and subsequently a member of the Committee on Appropriations of the House. I was on the first named Committee until the Budget Law went into effect and was then transferred to the Appropriations Committee and became chairman of the committee making appropriations for the Navy. I know J. K. Robison, who was then Chief of the Bureau of Engineering of the Navy. He was Chief of that Bureau during the close of my service. My atten-

tion is called to a letter dated March 24, 1922 (Pl. Ex.
767 91). I do not recollect whether that letter came to me by mail, by hand or how it came. With respect to Admiral Robison's testimony that in connection with that letter that he told me at that time that a contract was practically concluded for the entire Teapot Dome and told me at that time what the Navy's plans were, I am sure he never did so. With respect to Admiral Robison's testimony that he told me what our plans (meaning the Navy's plans) were at that time, which included an exposition of the entire matter, one portion of which was the development of the Teapot Dome, I state that Admiral Robison told me nothing at all about the Teapot Dome. Admiral Robison's statement that he told me that negotiations were under way for the leasing of the entire Teapot Dome is not correct.

In answer to Admiral Robison's statement that he told me in general terms how far negotiations had progressed I state that I never had any discussion with Admiral Robison about negotiations for leases at all. Admiral Robison's statement that he told me the government was going to lease the whole reserve and immediately, is not true. We had no discussion whatever about the leasing of these lands.

I am familiar with the contents of the letter of March 24, 1922. Admiral Robison did not at any time enlarge, qualify, contradict or discuss with me what is stated in writing in that letter.

As a member of the committee I have mentioned I was in touch with the policies and considerations that were discussed in connection with naval appropriations and naval matters. I never did, at any time, from Admiral Robison or from anyone else, learn anything, prior to the making and publication of these leases and contracts with the Pan American Company and the Mammoth Oil Company, of any policy other than a policy of offset drilling. I was at this particular time, in March or April, 1922, giving particular attention to naval matters, naval fuel matters, matters connected with the propulsion of vessels in the Navy, and necessary appropriations therefor. I was chairman of the sub-committee.

Cross-Examination.

I do not remember the date upon which I received the letter dated March 24, 1922. I do not know what became of the
768 original. I have tried to locate it myself in the files of the appropriations committee and it is not there. I should think I tried to locate it about a month ago.

I had a letter from Senator Pomerene with reference to this testimony and I went to the Committee on Appropriations to get the original letter if it were there. That is, I came from my home in Lansing to Washington for the purpose of trying to locate that letter. I had other business here at the time, but, being here, I did call on the Committee on Appropriations to see if the letter were there. The first time the letter of March 24, 1922, was drawn to my attention after I left Congress, was, I think, Senator Pomerene's letter a month ago or a little longer than a month ago. I have also had my attention called to this letter in another way. I have no recollection as to the manner of delivery of that letter. I do not remember the fact that Admiral Robison personally handed me that letter. I do not deny he did so, because I do not remember how I received it.

During the trial when the same was offered, the defendants and each of them objected to each item of evidence mentioned in the following motion, and each item of said evidence was received by the Court subject to the objection, with leave of the Court to the defendants, and each of them, at the conclusion of the evidence to move the Court to strike from the record each of the said items of evidence. In accordance with the leave of Court so given the defendant, Mammoth Oil Company at the conclusion of the evidence, made its motion to strike as follows:

"The defendant Mammoth Oil Company makes its motion separately and severally as to each item of evidence hereinafter mentioned, to strike from the evidence each item of deposits, deposit tickets, checks, book entries, ledger entries, and each other book of account, records or papers of the Exchange Bank of Carrizozo, New Mexico; and each item of the books, papers, records and deposit tickets of the First National Bank of El Paso, Texas; and each item of books and records of the Federal Reserve Bank of Kansas City, Missouri; and each item of books, records, papers and documents of the Central Union Trust Company of New York City; and each item of books, records and papers of the M. D. Thatcher Estate Company, a corporation of Colorado; and each item of books and records of the Dominion Bank of Canada, New York Branch, New York; and each item of books, records and papers of the co-partnership of Salomon Brothers & Hutzler, of New York; and each item of books, records and papers of the copartnership known as Walker Brothers of New York City; and each item of the books, records of the First National Bank of Pueblo, of Pueblo, Colo-

rado; and each item of the books, records and accounts of Rhoades & Company, a co-partnership, of New York. Also each item of testimony in relation to the books, records and accounts mentioned in this objection.

769 'The separate grounds of this motion as applied to each item of the several items above mentioned are that the evidence is irrelevant; that it is not within any issues tendered by the pleadings; that no sufficient foundation is laid by witnesses having knowledge of the facts concerned as to the said books, records and papers; that it is not in any way connected with the defendant Mammoth Oil Company or any person representing it or authorized to represent it; that it is not connected in any way with any of the transactions mentioned in the Bill of Complaint; that it is res inter alios acta; that it is in the nature of hearsay as to the defendant Mammoth Oil Company; that no conspiracy charged in the Bill has been proven; that the evidence is not of any act, declaration or admission in furtherance of any conspiracy charged in the Bill of Complaint, or tending to prove any such act, declaration or admission.'

The defendants Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company each then made in substance the same motion.

The Court then heard the arguments of counsel and thereafter received the briefs of counsel, both on the said motion to strike and on the merits as presented by the pleadings and the evidence; whereupon it took under advisement as well the said motions to strike evidence, and each of them, as the said cause on its merits. After considering the pleadings in the cause and all the evidence, including that attacked by said objections and motions to strike and the arguments and briefs of counsel, and deciding said cause on the merits, and in making such decision, considering all the evidence as though all the evidence had been properly admitted, the Court for the purpose of making the record struck out of the evidence the books and records of brokers and banks concerning the handling of bonds purporting to have passed through the Continental Trading Company. To which rulings of the Court, and each of them, as to each item of the evidence so stricken out the plaintiff at the time excepted.

(Approval of Statement of Evidence by Counsel for
770 Plaintiff.)

The foregoing statement of evidence, together with exhibits therein included and hereto appended, constitute the substance of all the evidence offered by plaintiff and defendants and received by the Court in this case, and upon which final decree of the District Court of the United States for the District of Wyoming was made and entered on the 19th day of June, 1925. Where herein there appear ommissions of exhibits, the same represent documents identified and marked with the missing exhibit numbers or letters, but not received in evidence.

OWEN J. ROBERTS
ATLEE POMERENE
Solicitors for Plaintiff.

(Approval of Statement of Evidence by Counsel for Defendants.)

The solicitors for the defendants in the above entitled cause hereby acknowledge service of notice of the lodgment by plaintiff in the office of the Clerk of the District Court of the United States in and for the District of Wyoming of the foregoing statement of the evidence in said cause, together with exhibits appended thereto, and also acknowledge the receipt from the solicitors for said plaintiff prior to lodgement of copy of said statement and exhibits; and the defendants, having by their solicitors examined said statement of the evidence and found the same to be true and complete, they hereby waive the ten days notice of time and place when the defendants will ask the United States District Judge who heard this this case to approve the said statement, and hereby consent to the approval thereof forthwith.

Dated at Cheyenne, Wyoming this 15th day of September, 1925.

JOHN W. LACEY
771 HERBERT V. LACEY
MARTIN W. LITTLETON
GEO. P. HOOVER
R. W. RAGLAND
D. A. MOFFAT
G. T. STANFORD
Solicitors for defendant Mammoth Oil Company.

EDW. H. CHANDLER
R. W. GARRETT
Solicitors for defendants Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company.

Certificate Of Approval Of Statement Of Evidence.

Be It Remembered, that the foregoing cause was instituted in this Court by a bill of complaint filed by the plaintiff, the United States of America; that the defendants filed answers to said bill of complaint; that the cause has been heard upon the issues arising on said bill of complaint and said answers; that all objections to the admission and exclusion of evidence as set forth in the said foregoing statement were made at the times as therein indicated, and said objections and exceptions reserved to the ruling of the Court thereon were duly entered of record. The foregoing statement of evidence was duly lodged in the office of the Clerk of this Court by the solicitors for the plaintiff and notice of such lodgment duly given the solicitors for the defendants, all as provided by Federal Equity Rule 75 (b); that the solicitors for the defendants have formally waived the ten days' notice of time and place when solicitors for plaintiff will ask the Court to
772 approve said statement of the evidence, and have consented to said approval forthwith.

Wherefore, the Court finding the foregoing statement of the evidence to be true and complete and properly prepared, the same is hereby approved this 25th day of September, 1925.

By the Court:

T. BLAKE KENNEDY,
United States District Judge, District of Wyoming.

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773 Petition for Appeal

To the Honorable T. Blake Kennedy, District Judge in and for said District—

The above named plaintiff, The United States of America, feeling aggrieved by the decree made and entered in this cause on the 19th day of June, A. D. 1925, does hereby appeal from said decree to the Circuit Court of Appeals of the United States for the Eighth Circuit for the reasons specified in the

assignments of error, filed herewith, and the said The United States of America prays that its appeal be allowed and that citation issue, as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals of the United States for the Eighth Circuit.

This petitioner further prays that an order be entered allowing this appeal to be made without the filing of a bond by the United States.

ATLEE POMERENE,
OWEN J. ROBERTS,
Special Counsel

ALBERT D. WALTON
United States Attorney for the
District of Wyoming.
Solicitors for the Plaintiff.

774 Endorsed: Filed in the District Court on Jul. 30, 1925.

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775 Order Allowing Appeal.

This cause coming on now to be heard this 30th day of July, A. D. 1925, upon the petition of the plaintiff for an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, and the Court being fully advised doth hereby grant said petition and allow said appeal without the filing of an appeal bond by the petitioner, the United States of America.

Dated July 30th, 1925.

T. BLAKE KENNEDY, Judge

Endorsed: Filed in the District Court on Jul. 30, 1925

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776 Assignments of Error.

And now comes the plaintiff, The United States of America, the appellant herein, and says that the decree entered in this cause as of June 19, 1925, is erroneous and against the just rights of said plaintiff for the following reasons:

1.

The Court erred in the first special finding, to-wit:

"that the question of the validity or invalidity of the Executive Order of May 31, 1921, copy of which is attached to

the Bill of Complaint, marked 'Exhibit A,' is immaterial and may be largely eliminated from consideration for the following reasons:

(a) The Court finds that counsel for the plaintiff at the trial abandoned the claim of any irregularity or fraud surrounding the transaction on account of the Executive Order.

(b) The Court finds that there was no fraud in procuring the Executive Order.

777 (c) The Court finds that the contracts here involved were not negotiated or executed in pursuance of or in reliance upon said Executive Order, but that on the contrary the negotiations preceding the execution of the contracts were actively, earnestly and completely participated in by the Secretary of the Navy and his designated representative of that Department, Admiral Robison.

(d) The Court finds that with respect to the lease in controversy, not a single significant act was performed without the advice and consent of Admiral Robison, the designated personal representative of the Secretary of the Navy, and that Admiral Robison consulted continuously with the Secretary of the Navy in regard to every proposed move and plan respecting said lease.

(e) The Court finds that the lease was executed by the Secretary of the Navy after full and mature consideration and review of its contents in the exercise of his official discretion.

(f) The Court finds that the negotiations and manner of executing the lease show that it was entirely immaterial so far as this case is concerned whether the Executive Order had ever been made or not.

(g) The Court finds that it was not unlawful for the Secretary of the Navy to consult with and receive advice from the Interior Department (which had men experienced in mineral land leasing) so long as the Secretary of the Navy retained in his hands and directed the Executive administration and policies.

778 (h) And the Court finds that the Secretary of the Navy did so retain in his hands and did so direct such Executive administration and policies."

2.

The Court erred in the second special finding, to-wit:

"respecting the provisions of the lease in controversy, claimed by counsel for plaintiff to be a purported delegation of authority by the Secretary of the Navy to the Secretary of the Interior,

(a) To fix the price of gasoline,

(b) To determine tests of oil lands,

(c) To consent to the surrender or termination of the lease, and

(d) To permit assignments or subleases,

counsel for plaintiff, in addressing the Court at the trial, used this language:

'I must be frank with your Honor—those provisions, in my judgment, would be severable. In other words, if these were the only illegal provisions of the lease, take them down if you find them illegal, and strike them out, and let the rest stand.'

Not only under the concession so made, but even had it not been made, the Court finds that the other parts of the contract are not affected by these provisions, and that these provisions can be separated from the rest."

3.

The Court erred in the third special finding, to-wit:

"that there was no fraud connected with the negotiation or execution of the lease or the supplemental agreement."

4.

The Court erred in the fourth special finding, to-wit:

779 "that Albert B. Fall and Harry F. Sinclair did not conspire to defraud the United States by any lease of any of the lands in controversy, or by the execution of the supplemental agreement."

5.

The Court erred in the fifth special finding, to-wit:

"that the negotiation of said lease agreement was not, nor was its conclusion a private or secret negotiation or agreement between Albert B. Fall and Harry F. Sinclair, and that

the negotiation and conclusion of said agreement was not attended by undue or unlawful secrecy."

6.

The Court erred in the sixth special finding, to-wit:

"that under the said Act of June 4th, 1920, the Secretary of the Navy was authorized to award said lease without advertisement or competitive bidding."

7.

The Court erred in the seventh special finding, to-wit:

"that under the Act of June 4th, 1920, the Secretary of the Navy was authorized to negotiate and execute said supplemental agreement without advertisement or competitive bidding."

8.

The Court erred in the eighth special finding, to-wit:

"that the Act of June 4th, 1920, is a special act, directed to the specific subject of Naval Reserves, and in itself furnishing a full and complete guidance, direction and authority to the Secretary of the Navy, and that the things to be done thereunder are taken out of the operation of all general laws."

780

9.

The Court erred in the ninth special finding, to-wit:

"that if the certificates delivered by the lessee to the lessor, representing the lessor's royalty oil, be used for the liquidation of indebtedness in regard to fuel oil in storage, including such storage, for fuel oil furnished for naval purposes at designated points, for securing kerosene, lubricating oils, and other petroleum by-products, the transaction is an exchange, but if such certificates are redeemed in cash the transaction is a sale, all of which was authorized by the Act of June 4, 1920."

10.

The Court erred in the tenth special finding, to-wit:

"that the disposition of the royalty oil belonging to the United States arising from the operations under said lease 'Exhibit B' as such disposition was actually made in this case, was not a sale, but was an exchange of such royalty oil for oil products and for storage tanks in which to store

the same. And the Court finds that the said exchange was made within the bounds of a reasonable discretion, and was fully authorized by the said Act of June 4, 1920."

11.

The Court erred in the eleventh special finding, to-wit:

"that no other person or corporation stood ready to obtain or was desirous of obtaining any lease upon the lands in controversy on terms as favorable to the Government as the terms of the lease here in controversy, and that no such person or corporation was denied an opportunity to bid or discouraged from so doing.

781

12.

The Court erred in the twelfth special finding, to-wit:

"that said Albert B. Fall and said Harry F. Sinclair did not conspire or combine, either fraudulently or otherwise, to defraud the United States of America—

(a) By granting said lease in violation of law;

(b) To favor or prefer said defendant, Mammoth Oil Company over and above any other persons desirous of taking a lease upon said lands;

(c) To insure to said defendant, Mammoth Oil Company, any right to receive any oil or gas from said lands, either to exhaustion or otherwise, or

(d) To lease the said lands to the defendant, Mammoth Oil Company, at an inadequate, improper or fraudulent consideration.

And the Court finds that the United States of America were not defrauded by any of the acts charged in the Bill of Complaint; that the lease in controversy was not granted in violation of law; that the defendant, Mammoth Oil Company, was not favored or preferred over or above any other person desirous of taking a lease upon said lands, and that the lease in controversy is not upon an inadequate or improper or fraudulent consideration."

13.

The Court erred in the thirteenth special finding, to-wit:

"that neither the said lease 'Exhibit B' nor the said supplemental contract 'Exhibit C' was in anywise fraudulent, illegal, null, or void, or of no force or validity as against the

United States of America, but that on the contrary the said lease and the said supplemental agreement are valid and binding instruments, duly and lawfully executed on behalf of the United States of America."

782 14.

The Court erred in the decree dismissing the bill of complaint and in not entering a decree for the plaintiff as prayed for in said bill of complaint.

15.

The Court erred in sustaining defendants' motion to strike from the record the testimony of the plaintiff's witness Hal E. Hunter. Said motion was as follows:

"Then, if Your Honor please, I make my objection and my motion to strike, which was stated would be made, and make it now on that all parties may have it.

The defendant Mammoth Oil Company makes its motion separately and severally as to each item of evidence hereinafter mentioned, to strike from the evidence each item of deposits, deposit tickets, checks, book entries, ledger entries, and each other kind of account, recorded on pages of the Exchange Bank of Clayton, New Mexico; and each item of the books, papers, records and deposit tickets of the First National Bank of El Paso, Texas, and each item of books and records of the Federal Reserve Bank of Kansas City, Missouri; and each item of books, records, papers and documents of the Central Union Trust Company of New York City; and each item of books, records and papers of the M. D. Thatcher Estate Company, a corporation of Colorado, and each item of books and records of the Dominion Bank of Canada, New York Branch, New York; and each item of books, records and papers of the co-partnership of Salomon Brothers & Hutzler, of New York; and each item of books, records and papers of the co-partnership known as Walter Brothers of New York City, and each item of books, records of the First National Bank of Pueblo, of Pueblo, Colorado; and each item of the books, records and accounts of Blondin & Company, a co-partnership of New York.

783 Also each item of testimony or evidence in the books, records and accounts mentioned in this objection.

The separate grounds of this motion as applied to each item of the several items above mentioned are that the evidence is irrelevant; that it is not within any issues tendered

by the pleadings, that no sufficient foundation is laid by witnesses having knowledge of the facts concerned as to the said books, records and papers; that it is not in any way connected with the defendant Mammoth Oil Company or any person representing it or authorized to represent it; that it is not connected in any way with any of the transactions mentioned in the Bill of Complaint; that it is res inter alios acta; that it is in the nature of hearsay as to the defendant Mammoth Oil Company; that no conspiracy charged in the Bill has been proven; that the evidence is not of any act, declaration or admission in furtherance of any conspiracy charged in the Bill of Complaint, or tending to prove any such act, declaration or admission."

The testimony so stricken out was as follows:

I live at El Paso, Texas; am Cashier of the First National Bank of El Paso. In 1922 I was Assistant Cashier. I produce the account of Albert B. Fall, consisting of five sheets containing certain dates and numbers. (Pl's Ex. 109) Those are the original ledger sheets of Mr. Fall's account from December 22, 1919 to April 28, 1924. They are the original record of deposits and withdrawals kept in a loose-leaf system and worked with an adding machine.

I produce a deposit ticket in that account of October 21, 1922 (Pl's Ex. 110), in the handwriting of Mr. Gonzales, teller of the bank in cage 16, also a deposit ticket of
784 the same account of November 22, 1922 (Pl's Ex. 111), also in Mr. Gonzales' handwriting. In the spring of 1923 Mr. Ulrie, President of the Exchange Bank of Carrizozo brought in certain bonds to our bank. Any bonds received by a teller in our bank are turned over to the Mexican Department which handles Liberty Bonds.

16

The Court erred in sustaining defendants' motion to strike from the record the testimony of the plaintiff's witness Ignacio Gonzales. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record. The testimony so stricken out was as follows:

I made the deposit ticket (Pl. Ex. 110) in the usual course of business in the First National Bank of El Paso. I am in charge of the Liberty Bond Department and Mexican money. The ticket is in my handwriting. I made a record of the

bonds for which that ticket calls on the books. I produce a sheet from the book which is one of the records of the bank. The record in that book is in my handwriting made on the day of the transaction. Refreshing my memory from the record made by me I find that the numbers of the bonds represented by said deposit ticket are 1144110 to 1144114 inclusive.

The ticket of November 22, 1922 (Exhibit 111) is in my handwriting. I actually received the bonds noted thereon, but do not remember from whom I received them. I made the record of the numbers of them on the day and date they were received. That record is in my handwriting in the book of the bank. Refreshing my memory from this record
785 which I made, the numbers of the fifteen thousand bonds in question are 1222494, 340717, 341786, 341788, 92785, 92786, 923887, 972847, 1214821, 316469, 1222472, 1222473, 1222474, 1222475, 1222476.

17.

The Court erred in sustaining the motion of the defendants to strike out plaintiff's Exhibit 109. Said motion to strike out is the same as set forth in assignment for No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit was the ledger account of A. B. Fall in the First National Bank of El Paso, Texas, showing under the column headed "Deposits," an entry to the credit of said A. B. Fall of $2,200.00 June 1, 1922; $5,082.25 October 21, 1922; $15,150.00 November 22, 1922; $25,000.00 June 11, 1923; $971.36 June 18, 1923, and other items not material to the issues.

18.

The Court erred in sustaining the defendants' motion to strike out plaintiff's Exhibit 110. Said motion to strike out is the same as contained in assignment of error No. 15 heretofore set out, but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 110 was a deposit ticket with the First National Bank of El Paso, Texas, dated October 21, 1922, of A. B. Fall, showing a deposit to his credit as follows—

$5,000.00 L. Bonds at 100.50	5025.00
Accrued interest	61.25
	5086.25

19.

The Court erred in sustaining the defendants' motion
786 to strike out plaintiff's Exhibit 111. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out, but is not restated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 111 was a deposit ticket with the First National Bank of El Paso, Texas, dated November 22, 1922, to the credit of A. B. Fall, showing a deposit to his credit as follows—$15,150.00.

20.

The Court erred in sustaining defendants' motion to strike from the record the testimony of the plaintiff's witness Harlan J. Smith. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record. The testimony so stricken out was as follows—

I reside at Pueblo, Colorado; am Cashier of the First National Bank of Pueblo, and have been for twelve years. That Bank has an account with Tres Ritos Land and Cattle Company. I have produced here the ledger sheets of that account, covering from January 17, 1921 to January 17, 1923—11 sheets (marked Pl. Ex. 112). I produce the deposit ticket of October 5, 1922, in that account. It is the handwriting of L. T. Rule, Assistant Cashier (marked Pl. Ex. 113). I produce a deposit ticket of the same account dated October 23, 1922, which is also in Rule's handwriting. (Marked Pl. Ex. 114). Government bonds deposited under such a ticket would be held by the bank for a period and then be sold in the market.

I produce a memorandum of a sale of bonds and the bill for the sale of certain bonds by our bank. (Memorandum
787 and bill of sale marked as one exhibit Pl. Ex. 115.) Witness shown paper marked "Schedule of U. S. Bonds Deposited, Federal Reserve Bank, Kansas City, Denver Branch, Denver, Colorado, by First National Bank, Pueblo, Colorado," dated July 19, 1922. (marked Pl. Ex. 116). Witness also shown a paper headed "Federal Reserve Bank

of Kansas City, Denver Branch, Denver, Colorado, Schedule of U. S. Government Bonds." (Marked Pl. Ex. 117). That paper is in the handwriting of one of our clerks.

Our bank has an account with the M. D. Thatcher Estate Company. I produce the record of that account from April 1, 1922 to January 26, 1925, seventeen sheets (marked Pl. Ex. 118). I produce a deposit ticket in that account of July 15, 1922, in the handwriting of Mr. Booth (marked Pl. Ex. 119). I produce the ledger account of M. T. Everhart, Trustee, in our bank, consisting of one sheet, showing the account opened May 29, 1922 and closed May 2, 1923. (Marked Pl. Ex. 120). I produce deposit ticket in that account dated May 29, 1922.

21.

The Court erred in sustaining defendants' motion to strike from the record the testimony of the plaintiff's witness L. T. Rule. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out, and is not restated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was stipulated by the parties to be as follows:

I was a clerk in the employ of the First National Bank of Pueblo in May 1922; am now an Assistant Cashier. On May 29, 1922, M. T. Everhart handed me $90,000 par value in $1,000 denominations of United States Liberty Loan Bonds with the statement by Mr. Everhart that said bonds were
788 the property of A. B. Fall, were to be safely kept by the First National Bank of Pueblo for Mr. Fall's account. I earmarked the same and placed them in the vault of the bank. They remained in the vault of the bank for several months thereafter. Subsequently I received directions from someone to forward them to a point in the Southwest; the name of the point I cannot now recall. Prior to forwarding them I detached the June 15, 1922 coupons from each of said bonds. On October 5, 1922, I deposited said coupons to the account of Tres Ritos Cattle and Land Company in the First National Bank of Pueblo, making out the deposit ticket in my own handwriting, upon which deposit ticket, in my own handwriting, appears "From A. B. Fall bonds." I had no information from which to make the entry "From A. B. Fall bonds" except the statement theretofore made to me by M. T. Everhart at the time the bonds were delivered into the custody of the bank. The coupons in question, amounting to $1,575.00, were the coupons for 6 months interest on $90,

000 of Liberty Bonds. The credit memorandum or deposit ticket in my handwriting is Pl. Ex. 113. I subsequently received from M. T. Everhart $20,000 par value First 3½ Liberty Bonds for credit to the account of Tres Ritos Cattle and Land Company, which I deposited to the credit of that Company in the First National Bank of Pueblo on October 23, 1922, crediting the account of the Tres Ritos Cattle and Land Company with $101.94 per hundred, and with accrued interest, making a total deposit of $20,456.88, to the credit of Tres Ritos Cattle and Land Company. That transaction is identified by Pl. Ex. 114.

The said $20,000 bonds remained in the possession of the First National Bank of Pueblo for some time until a sale of bonds was made by the bank on June 18, 1923. At that time I took bonds to the extent of $50,000.00 par value from
789 the vault of the bank and on the typewriter wrote the numbers of the bonds to be forwarded to Logan and Bryan of New York, sale being made through a broker in Pueblo named Walpole. The numbers of the bonds so sold by the bank on June 18, 1923, were taken by me and put on a typewritten memorandum which I made of the bonds sold. The memorandum of the numbers of the bonds so sold is Pl. Ex. 115.

I acted as a clerk of the Tres Ritos Cattle and Land Company and was at one time Vice President of it. I resigned prior to 1922.

The M. D. Thatcher Estates Company held, on May 29, 1922, all of the stock of the Tres Ritos Cattle and Land Company as collateral security for loans, being of a par value of $10,000, 50 per cent. of which stood in the name of Albert B. Fall and 5 per cent. in the name of M. T. Everhart. Said collateral was returned to Tres Ritos Cattle and Land Company by the M. D. Thatcher Estates Company some time subsequent to May 29, 1922.

22

The Court erred in sustaining defendants' motion to strike from the record the testimony of the plaintiff's witness A. S. Booth. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not restated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I live in Pueblo, Colorado. I am Vice President of the First National Bank and also Secretary and Treasurer of

the M. D. Thatcher Estates Company. I remember a transaction which occurred with Mr. Everhart on May 29, 1922. I bought on behalf of the M. D. Thatcher Estates Com-
790 pany from Everhart $140,500 of Liberty Bonds. I made the posting in the ledger of these bonds and put the numbers in the ledger from the bonds themselves. I produce the ledger in my own handwriting and from that entry I give the numbers of the bonds in question. Nos. 954625 to 954637, inclusive; 782163 to 782200, inclusive; 782301 to 782350, inclusive; 972848 and 9; 530386 and 7; 782426 and 7; 782446 to 782449, inclusive; 782450; 924735 to 924739, inclusive; 530967 to 530970, inclusive; 530145; 583601 and 2; 570307 to 570311, inclusive; 472526 to 472528, inclusive; 1022480; 972411; 972401; 972823; 930150; 777200; 52649; 100048, all of one thousand dollars each, and 100613 at five hundred dollars. Par and accrued interest was the market price and was the price paid. Part of the proceeds were applied towards the liquidation of indebtedness then owing the M. D. Thatcher Estates Company, as follows: $83,000 of M. T. Everhart, for which we had some Tres Ritos Cattle and Land Company notes up as collateral; $10,000 was applied as against Tres Ritos Cattle and Land Company notes, for which there was no collateral to my recollection; $15,000 on note of A. B. Fall, for which there was no collateral to my recollection. At this period the M. D. Thatcher Estates Company held as collateral the capital stock of Tres Ritos Cattle and Land Company I think; I did not handle that part of it, however.

The balance of the proceeds of the purchase was credited to the Tres Ritos Cattle and Land Company account, viz. $11,523.10, in the First National Bank of Pueblo. It was credited to a temporary account to take care of, as we understood, sundry indebtedness of the Tres Ritos Cattle and Land Company not in shape for payment, $20,916.97. This is the account that was opened in the First National Bank of Pueblo under the name of M. T. Everhart, Trustee. There
791 was a draft remitted to the First National Bank of El Paso, Texas, for the account of A. B. Fall for $2,209.00. The remaining amount was paid to M. T. Everhart to cover some interest adjustment, $9,112.00.

(Cross Examination)

The $15,000.00 note of Fall was also signed, or endorsed by Mr. Everhart, to the best of my recollection.

I deposited the June 15, 1922 coupons from the $14,500 of Liberty Bonds in the First National Bank of Pueblo, Colorado, on July 15th to the credit of the M. D. Thatcher Estate.

23.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 112. Said motion to strike out is the same as set forth in assignment of error No. 15, and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 112 was the ledger account of the Tres Ritos Cattle and Land Company in the First National Bank of Pueblo, Colorado, which account showed a deposit to the credit of said Tres Ritos Cattle and Land Company of $11,527.10 on May 27, 1922, $1,375.00 on October 5, 1922; $20,456.88 on October 23, 1922, and other items not material to the issues.

24.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 113. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit was the deposit ticket, dated October 5, 1922 to the credit of the Tres Ritos Cattle and Land Company in the First National Bank of Pueblo, Colorado, being for U. S. 3 1/2 coupons, due June 15, 1922 $1,375.00; said ticket had endorsed thereon in the handwriting of the witness L. T. Rule, the words—"From A. F. Fall bonds."

25.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 114. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit was a deposit ticket in the First National Bank of Pueblo, Colorado, under date of October 23, 1922, to the credit of the Tres Ritos Land and Cattle Company as follows—

$20,000 1st 3 1/2 at C101.04	20,208.00
Interest	248.88
	20,456.88

26.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 115. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 115 showed a memorandum of bonds attached to draft on Logan & Bryan, New York City, June 18, 1923, for $50,483.35, and among the bonds so attached were Liberty Bonds of 1917, $1,000 denominations, numbered as follows: 211732, 211733, 211734, 246620, 246621, 1218908, 1218907, 1218910, 1218911, 1218912, 1218913, 1218914, 1218915, 1218916, 1218917, 1218918, 1218919, 1218920, 1218921, 1218922, 1222493, 148544, 934653, 570749, 1144148, 1144147, 1144146, 1144145, 1144144, 1144143, 1144142, 1144141, 1144140, 1144139, 1144138, 1144137, 1144136, 1144135, 1144134, 1144133, 95068, 95072, 2117043

783 Page 2 of said Exhibit shows so far as material, June 18, 1923, Liberty 1st 3-1/2's interest—$50,453.12

Interest June 15th to date 14.60

$50,467.72

27.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the witness Albert J. Conway. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows:

I live in Denver, Colorado. I am Cashier of the Denver Branch, Federal Reserve Bank of Kansas City. Before that I was Assistant Cashier. Pl. Ex. 116 is a coupon remittance letter received by us from the First National Bank of Pueblo on July 21st, bearing their date of July 19th (Pl. Ex. 116).

Under the practice that has existed since and prior to that date, the various banks in the Federal Reserve District remitted coupons by registered mail on a form supplied by us similar to this. We prepare these forms and furnish them to all Federal Reserve Banks. The coupons come in with this letter prepared by the Bank. It is [—] printed form to be

used by the bates. The regular practice when one of these form letters arrives with these coupons is that they are received by the registered Mail Division and immediately turned over to the coupon department, and the coupon department hands—the Manager of that department hands the letter to a girl. This girl is supplied with a lettered stamp, which is registered; she immediately stamps the letter in which the coupons are received, and all of the coupons
794 in that letter, with the same lettered stamp, which bears the number of the letter she is working that day; the letter "C" would be "C 1" and the date. The stamp I am referring to appears in the corner of that letter. I know who used the stamp "C 1, July 21," that is the stamp on that letter identifying the clerk who worked upon it. It was Miss Martha Anderson. We have made search to ascertain her whereabouts and have been unable to locate her.

28

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness E. A. Carlisle. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows:

I reside at Pueblo, Colorado; am an employee of the First National Bank. The ink figures on Pl. Ex. 116 are in my handwriting. The occasion of making out the paper was the transmitting of Liberty Bond coupons to the Denver Branch of the Federal Reserve Bank. The Liberty Bonds listed by me on this paper were listed correctly to the best of my knowledge and were forwarded with the Liberty Bond coupons to the Federal Reserve Bank.

29

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Hazel B. Ferguson. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of
795 brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows:

I live at Pueblo, Colorado, am a clerk in the First National Bank. As such clerk I wrote the portion which is in ink on Pl. Ex. 117. I made up the numbers mentioned on that sheet

from Liberty Bond coupons. The numbers were correct. The bonds were forwarded to the Federal Reserve at Denver.

30.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Margueritta Trada. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re stated solely in the interest of brevity and so as not unduly to encumber the record. The testimony so stricken out was as follows:

I reside in Denver, Colorado. In October 1922 I was employed by the Federal Reserve Bank. I recognize Pl. Ex. 117 as a paper upon which I worked. When the coupons came in they were listed, and they were all stamped with this one stamp and then sent to the Treasury. I would check the coupons that came in with that. I found 90 at $17.50 that should be $875. The amount was correct, but should have been on the other line. It was on the wrong line. The coupons were correct in amount and in number.

31.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 116. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re stated solely in the interest of brevity and so as not unduly to encumber the record.

796 Said Exhibit 116 was a letter, dated July 19, 1922, from the First National Bank of Pueblo, Colorado, to the Denver Branch of the Federal Reserve Bank of Kansas City, transmitting certain coupons, due June 15, 1922, from First 3 1/2% Liberty Loan Bonds to said Federal Reserve Bank for collection.

32.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 117. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 117 was a letter, dated October 11, 1922, from the First National Bank of Pueblo, Colorado, to the Denver Branch of the Federal Reserve Bank of Kansas City, in form similar to plaintiff's Exhibit 116, referred to in assignment of error 31, and which transmitted certain United States

3 1/2% Liberty Bond coupons, due June 15, 1922, to the said Federal Reserve Bank for collection.

33.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 119. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not restated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 119 is an original record of the First National Bank of Pueblo, Colorado in the form of a deposit ticket by M. D. Thatcher Estates Company with said Bank, dated July 15, 1922 of 1st 3 1/2% coupons—$2458.75.

797

34.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Harley D. Spielman. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re stated solely in the interest of brevity and so as not unduly to encumber the record. The testimony so stricken out was as follows—

I reside in Washington, D. C. I am Register of the Treasury of the United States. In answer to the the subpoena I have produced coupons due June 15, 1922, on certain bonds of the first three and one-half per cent Liberty Loan issue. I have coupons No. 10, due June 15, 1922 on bonds numbers 1144103 to 1144248.

Under the routine of the Federal Reserve Banks and of the Treasury of the United States, there is a cancellation stamp for each of the Federal Reserve Banks. I know the cancellation stamp of the Federal Reserve Branch of Denver. These coupons bear the Federal Reserve Bank cancellation punch of the Federal Reserve Bank branch of Denver, Colorado. It is cut into the coupon and is distinctive from the cut of other Federal Reserve Banks. In addition to the coupons from the bonds numbered as above mentioned, I have coupons No. 10, due June 15, 1922, from bonds 315,308, to 315,310, inclusive; 370742 to 370749, inclusive; 273,301 to 273,305, inclusive; 1,222,460 to 1,222,465, inclusive; 1,222,493; 1,222,472 to 1,222,479, inclusive; 1,222,528; 1,222,494; 1,214,821; 92,785 and 6; 923,287; 972,847, 8 and 9; 316,469; 340,717; 341,786, 341,788; 972,823; 972,401; 972,411; 1,222,489; 148,544; 934,653; 782,163 to 782,191, in-

clusive; 782,193 to 782,200, inclusive; 782,301; 782,302, 3, 4, 5, 6, 7, and 8 to 782,350, inclusive; 782,301 to 782,350, inclusive; 924,735 to 924,739, inclusive, 782,426 and 7;
798 782,446 to 782,450, inclusive; 924,735 to 924,739, inclusive, all of which bear the cancellation stamp of the Federal Reserve Bank of Denver (Pl. Ex. 121). There is a stamp "Paid" put on by my office in the regular routine when the coupons come in and that explains that stamp which will be found on the coupons.

Note—Coupons all alike with the exception of serial number, "Paid" stamp date and stamp of Federal Reserve Bank of Denver. One of said coupons is transcribed as Pl. Ex. 121, in assignment of error 35.

35.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's exhibit 121. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 121 was the coupons forwarded by the First National Bank of Pueblo, Colorado to the Federal Reserve Bank with the remittance letters of July 19, 1922 and October 11, 1922 (Exhibits 116 and 117), which coupons were detached from the $90,000.00 of bonds held for the account of A. B. Fall by the First National Bank of Pueblo, and certain other bonds delivered and sold by M. T. Everhart to the M. B. Thatcher Estates Company on May 29, 1922, said bonds being produced by the Register of the Treasury of the United States, to whom the same had been forwarded for collection by the Federal Reserve Bank of Kansas City.

36.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Robert Rae. Said motion to strike out is the
799 same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I live in New York City and am Assistant Agent in charge of the Dominion Bank of Canada, whose head office is in Toronto, Canada. I was Assistant Agent in charge of the agency of the bank in New York City in 1922. I produce

the ledger account of the Continental Trading Company, Ltd., of Toronto with the Dominion Bank of Canada, New York Agency (Pl. Ex. 135). This ledger account is in the handwriting of H. C. Henderson in part and in part in my handwriting. There is also a bond account of the Continental Trading Company, Ltd., which is here in Court in Mr. Henderson's possession. It is kept entirely in Mr. Henderson's handwriting and is one of the official records of the bank, kept in the usual course of business and has been produced here as such. I produce a letter of April 11, 1922, which is signed with Mr. H. S. Osler's signature.

The entries in Pl. Ex. 135, under date of April 13th are not in the handwriting of any clerk now in the employ of the bank and I cannot tell where the parties are who made them.

37.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Hector G. Henderson. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

880 I live in New York. I am a clerk in the Dominion Bank and was Securities Clerk in the New York Agency of that Bank since May 1920. I handle incoming securities from the time they come in. They are delivered to me, checked by me, and I make the necessary entries to see that payment is made. I do the same with regard to outgoing securities. I keep the security account of securities coming in and going out. I produce the record, being the securities account of the Continental Trading Company, Ltd., to which Mr. Rea referred in his testimony, consisting of two sheets (Pl. Ex. 138). The entries on these sheets are in my handwriting, except for the receipt signed for securities on one sheet. The entries under date of April 13, 1922, are in my handwriting. I, on behalf of the Dominion Bank, New York Agency, received $100,000 in bonds from Salomon Brothers and Hutzler, which were purchased by the Dominion Bank, New York Agency on April 13, 1922. They were received for account of the Continental Trading Company, Ltd. I also received from Walker Brothers $100,000 of bonds from Rhoades & Company [$50,00] of bonds on April 13, 1922 for the account of the Continental Trading

Company, Ltd., and from Walker Brothers $50,000 of bonds for the same account on April 17, 1922. These bonds, totaling $300,000 I delivered to H. S. Osler May 8th, and took his receipt for them. I produce his receipt (Pl. Ex. 139). The handwriting in the body of it is of A. W. Rice, who, with me, had custody of those bonds from the time they were received by the Dominion Bank until they were delivered to Mr. Osler and the receipt is signed in Mr. Osler's handwriting. I was present when they were delivered to Mr. Osler.

I also have and produce the brokers' contracts for the purchase of the bonds above mentioned, purchased by
801 the Dominion Bank, April 13th, and the bills for the securities (Pl. Ex. 140).

I personally counted the bonds delivered by the three brokerage houses mentioned on April 13th. I earmarked these bonds and set them aside in the vault and from the vault delivered them to Mr. Osler.

38.

The Court erred in sustaining the defendants' motion to strike from the record the plaintiff's Exhibit 135. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 135 is the original record of the Dominion Bank of Canada, New York Agency, being the ledger account of The Continental Trading Company, Ltd., in that Bank and showing the deposit to the credit of that account of payments received from the Sinclair Crude Oil Purchasing Company and the Prairie Oil and Gas Company and debits to that account for payments made to The Humphreys Mexia Company and the Humphreys-Texas Company during the years 1922-1923.

39.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 136. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 136 was an original letter produced from the files of the addressee, the Dominion Bank of Canada, New York Agency, written and signed by H. S. Osler, President,

on the letterhead of the Continental Trading Company, Ltd., dated April 11, 1922, at Toronto, Canada, and directing C. S. Howard, Esq., of the Dominion Bank, New York Agency, as follows—(1) A certain note made by the Humphreys Mexia Company was to be satisfied and cancelled out of a credit balance due to that Company and the remaining amount due to be forwarded to the National City Bank for credit of the Humphreys Oil Company (successor). (2) The writer states his intention to draw checks on April 15th in favor of Western Oil Fields Corporation and in favor of A. E. Humphreys in certain sums, leaving thereafter a net credit balance to the account of the Continental Trading Company, Ltd., in the Dominion Bank of $438,680.31. (3) The Dominion Bank is directed out of this credit balance to purchase United States Liberty 3½% Bonds to the face amount of $300,000, debiting the cost of the same to the account of the Continental Trading Company, Ltd., and (4) All letters and vouchers accompanying payments made by "Sinclair and Prairie Companies" are directed to be forwarded to the office of the Continental Trading Company, Ltd., in due course.

802

40.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 137. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not restated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 137 is an original record of the Dominion Bank of Canada, New York Agency, in the form of a deposit ticket to the credit of H. S. Osler for the proceeds of United States Liberty 3½% Bonds, face amount $6,000.00, sold at 99.46, the proceeds credited being $6051.60.

41.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 138. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

803

Said Exhibit 138 was a ledger account of the Dominion Bank of Canada, New York Agency, showing the purchase on April 13, 1922 of $250,000 of First 3½% Liberty Loan Bonds, $100,000.00 from Salomon Brothers and Hutzler,

$100,000.00 from Walker Brothers, $50,000.00 from Rhoades & Company, and also the purchase on April 17, 1922 from Walker Brothers of $50,000.00 par value of the same bonds, and the delivery of said $300,000.00 of said bonds on May 8, 1922 to Henry Smith Osler, President of the Continental Trading Company, Ltd.

42.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 139. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 139 was a receipt as follows—

Agency, The Dominion Bank

51 Broadway

New York, May 8, 1922.

Received from The Dominion Bank by Continental Trading Co., Ltd., Three Hundred Thousand 00/ U. S. Lib. Loan Dollars 3½ Bonds
In account of
$300,000 Bonds

(Sgd.) H. S. OSLER
President, Cont. T. Co.

43.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 140. Said motion to strike out is the same as contained in assign-
804 ment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 140 consisted of brokers' contracts and bills for securities purchased by the Dominion Bank as follows—

Sheet No. 1. Showing delivery bill of Rhoades & Company to the Dominion Bank of $50,000.00 First Liberty Loan 3½% Bonds, at the invoice price of $50,423.61.

Sheet No. 2. Showing sale of said bonds April 12, 1922 by Rhoades & Company, invoice price $50,423.61.

Sheet No. 3. Showing sale to Dominion Bank by Walker Brothers April 12, 1922 of $100,000.00 3½% Liberty Bonds, invoice price $101,089.72.

Sheet No. 4. Being letter of advice showing purchase April 13, 1922 of said $100,000.00 3½% Liberty Bonds for account of the Dominion Bank at invoice price $101,089.72.

Sheet No. 5. Showing sale April 13, 1922 by Salomon Brothers and Hutzler to Dominion Bank of Canada $100,000.00 Liberty First 3½% Bonds at invoice price of $101,047.22.

Sheet No. 6. Showing delivery bill, dated April 13, 1922, of said $100,000.00 3½% Liberty Bonds to Dominion Bank of Canada, at said invoice price of $101,047.22.

44.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness George W. Healey. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows:

I live in New York City and am General Manager of Salomon Brothers & Hutzler, who are dealers in United States Government Bonds and other securities. I have been
805 general manager since before April 13, 1922. The accounts and records of the firm were kept under my supervision regularly and in the daily course of business. The transaction of the firm were recorded at the time they took place in the books and records of the firm. I was in charge of the clerks who made the entries and they were made under my direct supervision. The records made on April 13, 1922, have been under the custody of myself and the vault custodian since that time. The vault custodian is also connected with the firm. I produce the records so removed from the records by myself from the vault. The records so produced are the trader's report of the sale of 100 United States Liberty 3½% to the Dominion Bank on April 13th.

When a trade is made, when bonds are either bought or sold, the trader makes a slip called a report. The trader is an employee of the firm and makes the original report that he has made a purchases or sale. Then we have a blotter

sheet carried in loose-leaf form in one of our books. It is a book of first entries. It is a journal. I produce the sheet from the blotter for April 13, 1922. We also have a "received blotter" which is a book of original entry of all the bonds purchased and received on April 12, 1922. I also produce a ledger sheet into which these entries were finally posted, which is not a book of original entry but a book made from the other records. I have also a trader's purchase slips of the same 100 bonds that were sold to the Dominion Bank which were received on that day; in other words the incoming sales and outgoing purchase slip. I have examined all of these records to ascertain what clerks made them. None of the clerks who made them are now in the employ of my firm. I have made inquiry from the partners and others with regard to them in an effort to ascertain in whose handwriting
806 they are and I have not been able to identify the handwriting. I reorganized the department and no body is there now who was there in 1922. I have no idea where these clerks now are.

The bonds covered by the sale to the Dominion Bank are entered on both blotter sheets I produce. The entry and the sale to the Dominion Bank refers to a purchase on the received blotter, in other words, we delivered them from those bonds we had previously purchased. Both of these records, the incoming and outgoing, contain the numbers of the bonds and it was the duty of a clerk to enter them coincidental with the transaction on these blotter sheets. I point out the numbers of the bonds as entered as sold to the Dominion Bank, two lots of 50,000 each. I mark the numbers as entered by our clerks opposite the transaction.

(The numbers marked by the witness are 1144251 to 300 inclusive, and 1144101 to 1144150, inclusive.)

Papers produced by the witness marked as one exhibit, Pl. Ex. 141.

Cross Examination.

The place from which I gave the numbers of those bonds appears on this exhibit in lead pencil in the next to the last column on the first paper of this exhibit. The numbers always taken in lead pencil. I do not know who made that report of those numbers on the incoming sheet. The lead pencil entries were made when the bonds were received, after they had been purchased by our representative. I do not

know who made the first entry, 1144300 and then a line and after that 251. I know what it means. I know it means that we got 50 bonds from 251 to 300. I know solely because that was the method of recording the numbers. Down at the place where I have marked x in lead pencil I
807 find 1144101 and a line and then 49. That means we received those 49 bonds and also another 1 that is marked 50, making a total of 50 bonds. When bonds go out for delivery after we have sold them the entry as to the bonds that are sent out is made opposite the entry on the yellow sheet, which is the delivery sheet, and the entries there are 50-2L and 50-2L-A. That figure is intended for an R. The first one is R R L 1. That means "Received." That refers to another portion of the exhibit. No. 1 and No. 8—L-1 and 8 I think it is. You see these things are written under great pressure. We have literally millions of bonds coming in and going out every day and in order to save writing those numbers twice we do it in that way because many times these bonds come in at 2:10 and we have to deliver them out at 2:15, or otherwise fail on them as a result. The first entry of fifty "2 R" means line 2 in the receiving sheet. It refers to "L" and that means the Liberty blotter, and "R" means received on the Liberty blotter, line 8. When you say you do not see any "1" but do see a "2," I reply there is a "1" there. You see, here is a "L." He has made the L-1 practically together. When you say I interpret it that way I reply I know it is that way. When you point to a figure which you call a "2" I state it is an R. That is "Received." That means "Received blotter."

I stated that I cleaned out that department, discharged practically all of the men that were connected with the sheets constituting this exhibit. That was one of the departments that I reorganized completely. I discharged those employees for incompetence.

45.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 141. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the
808 record.

Said Exhibit 141 was certain original records of Salomon Brothers and Hutzler, showing the purchase of $100,000.00 First 3-1/2% Liberty Loan Bonds and the re-sale of same to

the Dominion Bank, New York Agency, by said Salomon Brothers and Hutzler on April 13, 1922; two of said original sheets showing the numbers of the bonds so received and delivered.

46.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness James McGrath. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record. The testimony so striken out was as follows:

I live in Brooklyn, New York, am and have been since prior to April, 1922. Assistant Cashier of Walker Brothers, a partnership, conducting a commission business in stocks and bonds at 71 Broadway, New York. I was assigned to collect or take up any great amount of bonds and deliver them myself. I believe that I went to the Central Union Trust Company of New York on April 13, 1922, and received $100,000 of bonds. I went with them to the Dominion Bank, 51 Broadway, and delivered them there. I counted them at the Central Union Trust Company, but not at the Dominion Bank. I took them directly from the Central Union to the Dominion Bank. I have no record of the numbers.

47.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness F. Zettler. The motion to strike out is the same as is contained in assignment of error No. 15 hereinbefore
809 set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so striken out was as follows:

I live in New York; am and since 1922, have been Cashier of Rhoades & Company, brokers. The records of Rhoades & Company were kept under my supervision. I produce the original record of certain transactions on April 13, 1922. These are the cage records of receiving and delivery of 50,000 of 3½ bonds. The blue one is the sale and the yellow one is the receiving. On the blue or sale side there are certain figures in lead pencil. They are in the handwriting of Robert Olson. On the delivery side there is on the face of the typewritten memorandum the words "First Nat. Bk."

They are in Mr. Phelan's handwriting. On the back is a list of numbers in Mr. Coffey's handwriting.

In the usual course of business it is the practice to enter the numbers of the bonds on either the delivery side or the receiving side, whichever happens to be available.

The above two sheets marked for identification Pl. Ex. 142.

I produce the cancelled check of Rhoades & Company to the order of the First National Bank for $50,188.75, dated April 13, 1922, which is the check that purchased these bonds (Check included in Pl. Ex. 142). I have here also a letter confirming the sale to us of these bonds from the Trust and Savings Bank of Chicago. The records which I produce were kept in the regular course of business by clerks in our employ at the time the transactions were made, which clerks had knowledge of the matters they recorded.

48.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Robert F. Olson. The motion to strike out is the same as contained in the assignment of error No. 15 hereinbefore set out but it not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows:

I live in New York City and am Securities Teller of Hibernia Securities Company. In April, 1922, I was in the employ of Rhoades & Company. I have examined the yellow sheet, being part of Exhibit 142, and I recognize the words "First Nat. Bk." as in the handwriting of William Phelan. The words opposite the words "First Nat. Bk." are in my handwriting. The blue sheet is the delivery sheet. The entry referred to shows that the entry is of bonds received from the First National Bank and is made in order to identify the sale with the receipt.

49.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Christopher A. Coffey. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I reside in New York City, am a clerk and broker. In April, 1922, I was employed by Rhoades & Company. On Cashier's memorandum of receipts (Pl. Ex. 142) the numbers there appearing are the numbers of the bonds that I received and put on this paper concerning the quantity. I counted to see if I had the right quantity of bonds and then wrote the numbers on the back of this received slip and then handed the bonds and the received slip over to the check clerk and the bonds were turned over to the delivery clerk and he put the contra entry on the delivery memorandum of Rhoades & Company.

50.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 142. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 142 is original instruments from the files of Rhoades & Company as follows—(1) A cashier's memorandum showing the receipt of $50,000 par value 3½% Liberty Bonds from the First Trust and Savings Bank of Chicago at the rate of 99.24, total purchase price being $50,188.75. The bond numbers so purchased appear on the back of this cashier's memorandum as follows—570742 9 1222528 273.01 5 315508 10 1222460 5 1222472 9 316469 1214821 972847 923,-287 927811G 241788 341786 240717 972823 97284819 972401 972411 1222489 1222493H4 148544 934653. (2) A check of Rhoades & Company, dated April 13, 1922, payable to the order of the First National Bank for $50,188.75, drawn on Bank of America. (3) A cashier's memo of delivery to the Dominion Bank of 50,000 first Liberty Bonds 3½%, price 99.70, interest $573.61, total $50,423.61. (4) A letter from H. L. Porter, Manager, First Trust & Savings Bank, Chicago, dated April 12, 1922, addressed to Rhoades & Company confirming their telegram to the First National Bank of New York to deliver among other Liberty and Victory Loan Bonds to Rhoades & Company 50,000 3½ per cent. at $99.24—

	$49,620.00
Interest—	568.75
	$50,188.75

812 51.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Samuel A. Brown. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I live at Leonahurst, New Jersey. I am Assistant Secretary of Central Union Trust Company, New York City, and was in 1922. On April 13, 1922, that company sold a lot of bonds out of a number of estates for which we were executor or trustee. We sold on that day bonds out of the Hopkins Estate, $100,000. I saw the memorandum to deliver bonds to Walker Brothers. I produce it. It is the kind of a memorandum we use in all such transactions in trust estates. I also produce a bill of sale and also a memorandum on the letterhead of Central Union Trust Company of certain numbers. (The three papers marked for identification Pl. Ex. 1431. The first of the papers identified was written by two of our clerks, A. B. Kelly and Edward Bigoney. As to the memorandum containing certain numbers of bonds I cannot swear I know who made it. It was made by a clerk in the regular course of business under my direction and was made for information as to the number of the bonds.

Cross Examination.

The first sheet was made by the clerks, or under the direction of two clerks. I do not know who made the typewriting on it.

52.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness
813 E. F. Bigoney. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I live in Brooklyn. In 1922 I was employed by Central Union Trust Company as head of the Securities Department. I had charge of the outgoing securities, as well as of the department. Referring to a memorandum in typewriting purporting to show a delivery from the estate of Zoe C. Hopkins

on April 13, 1922, such a delivery was made from the account of George B. Hopkins for the account of Zoe C. Hopkins. I remember the transaction.

In the usual course of business, where securities were to be delivered out by the company, it was the duty of the man who made the delivery to make a memorandum of the numbers of the securities taken from the estates and delivered out. The figures on the memorandum identified as coming from the Company's record bearing serial numbers are in the handwriting of an employee in my department, Miss Gibben, who is no longer in the employ of the company and who, I believe, is not living in New York. That memorandum was made at my request and then returned to me with the bonds and was kept as a memorandum of the bonds delivered, so that we could make the record with the broker's bill. The other memorandum that Mr. Brown produced, which he stated was a broker's bill is a bill for those same bonds. I know the bonds were delivered to Walker Brothers and sold to Walker Brothers. The first sheet produced by Mr. Brown shows that I approved of the transaction and initialed it, and also the memorandum of numbers contains my figures showing the trust account. The number "3154" is the trust account of Hopkins.

Cross-Examination.

My check on this indicates that I approved of the
814 transaction. It does not mean that I checked the figures of the larger sheet, and my check on the sheet bearing certain numbers does not indicate that I compared the numbers. I do not know of my own knowledge, except as I rely upon this particular sheet, what the numbers of those bonds were. I do not know the numbers of the bonds delivered of my own knowledge. I believe Mr. Kelly made the delivery.

53.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness A. B. Kelly. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I reside in New York City; am in the garage business. In April, 1922, I was employed in the Securities Division of Central Union Trust Company. I recall a delivery of 100,-

000 of bonds to Walker Brothers' representatives on April 13, 1922. On the bill of Walker Brothers the numbers in blue pencil, 3154, was made by me. I made the delivery to Walker Brothers' representative. At the time I made that delivery I had a memorandum of the transaction and a memorandum of the numbers of the bonds with 100,000 of those Liberty 3½'s. I had a list of the numbers with the bonds. The list of numbers, I believe, was made in our department by Miss Gibben. It looks like her writing. I do not know where she is now.

Cross Examination.

I have been out of the trust company a year and a half and in the garage business. I made deliveries of
815 bonds every day I was with the Central Union Trust Company, thousands and hundreds of thousands worth of bonds to various brokers and bankers in the business district of New York. I would not remember any particular deliver from my memory. I do remember this one from memory. I would not have remembered it if I had not been shown the papers. I was shown the papers just before I came in here today. I identified the transaction because of my own figures on the papers; I mean the figures "3154, Trust Company" in lead pencil in an angular fashion across this April 13th, 1922. I have also this paper which will show these bonds were delivered and were checked up. I checked the whole list up from this bill. My initials are at the top "A B K". There is nothing on the smaller, or third sheet, which has any of my figures on it. The figures "3154" at the top of that sheet, are Mr. Bigoney's figures. I know his handwriting. So far as the numbers are concerned I may have had something to do with checking the bonds, but I don't remember.

Redirect Examination.

The paper shown me, being a credit memorandum headed "Central Union Trust Company of New York, Personal Trust Department, 3154, Zoe Hopkins, 41522" is all my work and refers to the same transaction. On the larger memorandum shown me before there are certain numbers noted and certain check marks. I believe if my signature or my initials are here I checked the numbers from that slip. I would not say I checked the numbers with the bonds. I probably checked from the slip to the credit memorandum.

(Credit memorandum added to Ex. 143 for identification.)

54.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 143. Said
816 motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not restated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 143 is certain original records of the Central Union Trust Company, showing (1) Sale through Walker Brothers of $100,000 United States 3½% Liberty Bonds taken out of and sold for the account of the Estate of Zoe C. Hopkins April 13, 1922, bonds numbers 782163 200—782301/50—782426 7—782446 50—924735 9. (2) A credit to Zoe C. Hopkins trust account of the sum of $101,027.22 from the sale of the aforesaid bonds. The credit memorandum repeats the bond numbers as already stated. (3) A memorandum of sale from the Central Union Trust Company to Walker Brothers of $100,000 face value 3½% Liberty Bonds, dated April 13, 1922, and showing the total sale price $101,027.22, being the same amount stated in the foregoing item (2).

55.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness A. B. Brownfield. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony os stricken out was as follows:

I live at Carrizozo, New Mexico. I am Receiver of the Exchange Bank of Carrizozo. I have produced the original records of that bank touching a transaction of March 29, 1923. I have the daily cash book. I also have the ledger account of A. B. Fall (Pl. Ex. 145). I have the original remittance sheet under date March 29, 1923, as delivered to me by the State Bank Department. I also produce a deposit ticket of March 29, 1923, (Pl. Ex. 144).

817 56.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness R. E. Lemon. Said motion to strike out is the same

as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I live at Carrizozo, New Mexico. In 1922 I was Assistant Cashier in the Exchange Bank at Carrizozo. The deposit ticket was filled out by me in my handwriting (Pl. Ex. 144). I received and actually handled the securities that are noted on the deposit ticket, $50,000 First 3½% Liberty Bonds. I clipped the coupons from them and handed them to Mr. Thurmond who was stenographer and bookkeeper in the bank. I also made the entry of that transaction in the book marked "Journal, No. 12, Exchange Bank," under date of March 30, 1923. I charged the First National Bank of El Paso the $50,000 covering the face value of the bonds, and also $875.00, covering the value of the coupons I clipped. As to the sheet produced by Mr. Brownfield as the ledger account, no one but Mr. Thurmond and myself made entries on that sheet (Pl. Ex. 145). They were made with a typewriter. The entries so made were correct and made at the time the transactions were recorded. When I had clipped the coupons from this $50,000 of Liberty Bonds I handed the coupons to Mr. Thurmond to be written up.

57.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 144. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely
818 in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit No. 144 was a deposit ticket in the Exchange Bank of Carrizozo, New Mexico, showing a deposit by A. B. Fall, Three Rivers, on March 30, 1923.

Bonds—	$50,000.00
Coupons—	875.00
Total—	$50,875.00

58.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness B. S. Thurmond. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out

but is not re-stated solely in the interest of brevity and so as to not unduly to encumber the record.

The testimony so stricken out was as follows—

I live at Hatch, New Mexico. In March, 1923, I was employed at the Exchange Bank of Carrizozo, New Mexico, as stenographer and bookkeeper. The sheet which has been produced here as one of the records of the bank is in my handwriting. It is in the form of a cash letter or transmittal sheet of foreign items going to other banks. When we had foreign items going to other banks the items were simply listed on here. It was in duplicate. This is a carbon copy (Pl. Ex. 146). The original went to the bank on which the letter was drawn. Refreshing my memory from that sheet in my hand writing, I state that I forwarded to the First National Bank of El Paso on March 29, 1923 50 Liberty Bond coupons. The numbers of said coupons were as follows: 1144127, 1144128, 1144129, 570748, 570747, 570746, 570,745, 1222477, 570742, 570743, 570747, 1222478, 1144120, 1144131, 1144132, 315310, 315,309, 315308, 1222465, 1222464, 819 1222463, 1222462, 1222461, 1222460, 1222479, 1144122, 1144123, 1144124, 1144125, 1144126, 1144115, 1144116, 1144117, 1144118, 1144119, 1144120, 1144121, 1222528, 273301, 273302, 273303, 273304, 273305, 1144103, 1144104, 1144105, 1144106, 1144107, 1144108, 1144109.

I recognize as being in my handwriting a stub in a book, which stub is a record of insurance on an item consigned to the First National Bank of El Paso. The item was $875.00 worth of Liberty Bond coupons, and the date is March 29.

The ledger sheet marked Pl. Ex. 145, could have been worked upon either by Mr. Lemon or me. As to my entries I made upon it they were correct and made at the time of the transaction in the usual course of business.

59.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's exhibit 145. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 145 was the ledger account of A. B. Fall in the Exchange Bank of Carrizozo, New Mexico, showing the deposit to the credit of said A. B. Fall on March 29, 1923 of $50,875.00 and on April 7, 1923 of $937.52.

60.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 146. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 146 was an original record of the Ex-
820 change Bank of Carrizozo, New Mexico, showing the remittance to the First National Bank of El Paso of the coupons due December 15, 1922, detached from $50,000.00 par value First 3½% Liberty Loan Bonds, for collection and credit to the account of said Exchange Bank and showing the numbers of the said coupons so detached and forwarded for collection.

61.

Said Court erred in sustaining the refusal of the witness M. T. Everhart to answer the question hereinafter set forth on the ground that his answer would tend to incriminate him and in not compelling said witness to answer said question. The testimony of said witness preliminary to the said question was, in substance, as follows—

Direct examination of M. T. Everhart, a witness on behalf of plaintiff, by Mr. Roberts.

My name is M. T. Everhart; residence, Pueblo, Colorado, business, ranching. I know L. T. Rule, an employe of the First National Bank of Pueblo. I do not recall at this time whether I saw Mr. Rule on May 29, 1922 or not.

I respectfully decline to answer whether as agent for Mr. Albert B. Fall I gave Mr. Rule any property for safekeeping by the First National Bank of Pueblo in the month of May, 1922, on the ground that my answer might tend to incriminate me.

I am not and never have been an employe of the United States Government. I never have been in any way officially connected with the Mammoth Oil Company nor with Mr. Harry F. Sinclair. I had nothing at all to do with the transaction or the making of the lease of Teapot Dome. I decline to answer on the ground aforestated the question whether if I had anything to do with any property for Mr. Fall, I did it merely as his agent or his messenger. (Argument.)
821 (Verbatim)—

Mr. Wise (Counsel for Everhart): If your Honor please, the witness is now prepared to answer that question

as propounded to him, and makes his statement in connection with it.

The Witness: I am asked the question, "If you had anything to do with any property for Mr. Fall you did it merely as his agent or messenger, did you not?" My reply to that question is "no." I desire to state to this court that I did have in my possession certain bonds, about which government counsel has interrogated me; I had them in my own right as a principal, and to give further evidence concerning same will, I believe, tend to incriminate me. The question propounded to me refer to property; I assume that the word "property" refers to bonds. The only transactions we had concerning property were had by me and Mr. Rule concerning bonds, and to give further evidence concerning I believe I should decline to answer because to it I cannot testify without the danger of incriminating myself.

Mr. Roberts: We still insist, if your Honor pelase, that we have a right to ask further questions, and I shall put some to the witness and ask your Honor to rule.

Direct Examination

Continued By Mr. Roberts:

Mr. Everhart, you were in the eastern part of the United States in May, 1922?

A. I respectfully decline to answer the question.

Mr. Roberts: I submit, your Honor, that there is nothing to incriminate the witness in an answer to that question.

The Court: I am inclined to think that that inasmuch as he now has said that he had possesison of these bonds as a principal himself, that the further disclosures of the
822 witness may come within the rule.

Mr. Roberts: Your Honor sustains the witness, position?

The Court: Yes.

Mr. Roberts: We reserve an exception, if Your Honor please.

62.

The Court erred in sustaining the refusal of the witness M. T. Everhart to answer the question hereinafter set out on the ground that his answer might tend to incriminate him and in not compelling the said witness to answer said question.

The testimony of said witness preliminary to said question is as set out in the last preceding assignment of error.

Direct Examination

Continued by Mr. Roberts:

Q. Mr. Everhart, have you knowledge that Secretary Fall received any bonds in May, 1922?

A. I decline to answer.

The Court: The witness will be sustained.

Mr. Roberts: Your Honor will give us an exception?

The Court: Yes.

63.

Because of abuse of discretion by the Court in denying the motion for a continuance filed February 26, 1925 in order to enable the plaintiff to secure the depositions of Henry Smith Osler, Britton Osler, N. E. Strickland, Suvena Margaret Fordyce, Morley H. Breuls, Harold E. Boston, and Louis Samuel, in Toronto, Canada, for the reasons appearing of record in this case, as set forth in the affidavits of E. G. McMillan, of Atlee Pomerene, and of Owen J. Roberts, filed in support of said motion on February 26, 1925, and from
823 the affidavits of the said Atlee Pomerene and Owen J. Roberts filed on December 20, 1924 in support of a motion for a continuance then pending, and from the affidavits of the said Atlee Pomerene and Owen J. Roberts filed on September 24, 1924 in the contempt proceeding pending in the Supreme Court of the Province of Ontario, copies of which two last designated affidavits were filed with and made a part of the affidavits first aforesaid of the said Atlee Pomerene and Owen J. Roberts, and also as appears from the deposition of William Patrick John O'Meara, filed in this cause, and also as appears from the incomplete deposition of the said Henry Smith Osler and the other witnesses, above stated, filed in this cause.

64.

Because of abuse of discretion by the Court in denying the plaintiff's petition to re-open this case, filed July 6, 1925, in order to enable the plaintiff to take the depositions of the said Henry Smith Osler and the other witnesses named in the last preceding assignment of error.

Wherefore, Plaintiff prays that the decree herein be reversed and that the District Court of the United States for

the District of Wyoming be instructed to enter such a decree as is prayed for by the plaintiff in its bill of complaint.

ATLEE POMERENE
OWEN J. ROBERTS
Special Counsel.

ALBERT D. WALTON
United States Attorney for the District of Wyoming.
Solicitors for the Plaintiff.

824 Endorsed: Filed in the District Court on Jul. 30, 1925.

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825 Citation for Appeal.

In the District Court of the United States for the District of Wyoming.

The United States of America, Plaintiff,
No. 1431 vs. In Equity
Mammoth Oil Company, a corporation of the State of Delaware, Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware, and Sinclair Pipe Line Company, a corporation of the State of Maine, Defendants.

To the Defendants Above Named—Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty (60) days from and after the day this citation bears date, pursuant to an appeal allowed by the District Court of the United States for the District of Wyoming, sitting at Cheyenne, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable T. Blake Kennedy, Judge of the District Court of the United States for the District of Wyoming, at Cheyenne in said District, this 30 day of July, A. D. 1925.

T. BLAKE KENNEDY
Judge.

826 Service of the foregoing citation is hereby accepted on behalf of all of the above named appellees this 30th day of July, 1925.

HERBERT V. LACEY
JOHN W. LACEY
of Solicitors for Appellee, Mammoth Oil Company.

EDW. H. CHANDLER
RALPH W. GARRETT
Solicitor for Appellees, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company.

Endorsed: Filed in the District Court on Aug. 7, 1925.

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828 Motion for Order enlarging Time within which to Docket Case and File Record thereof in United States Circuit Court of Appeals.

Comes now the United States of America, the plaintiff above named, by Atlee Pomerene and Owen J. Roberts, Special Counsel, and Albert D. Walton, United States Attorney for the District of Wyoming, solicitors for the plaintiff and appellant in the above entitled cause, and move the Court for an order enlarging the time within which the above entitled cause may be docketed and the record thereof filed with the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, to and including the 18th day of October, A. D. 1925, for the reason and upon the ground that the said plaintiff and appellant has been, and is, unable to cause said case to be docketed and the record thereof filed with the Clerk of the said Circuit Court of Appeals for the Eighth Circuit within the time limited by the citation on appeal issued
829 herein, as more fully appears by the affidavit of Albert D. Walton hereto attached, marked Exhibit "A", and made a part hereof.

Dated this 24th day of September, A. D. 1925.

ATLEE POMERENE
OWEN J. ROBERTS
Special Counsel.

ALBERT D. WALTON
United States Attorney for the District of Wyoming.
Solicitors for the Plaintiff and Appellant.

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830 Exhibit "A".

Affidavit in support of Motion for Order enlarging Time, etc.

The United States of America,
District of Wyoming—ss.

Albert D. Walton, being first duly sworn according to law upon his oath deposes and says: that he is the duly appointed, qualified and acting United States Attorney for the District of Wyoming, and one of the solicitors for the plaintiff and appellant in the above entitled cause;

That the citation on appeal in the above entitled cause was duly issued on the 30th day of July, A. D. 1925, in and by which said citation on appeal the plaintiff and appellant is required to docket the above entitled cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit on or before the 28th day of September, A. D. 1925; that in the preparation of said record on appeal it has become necessary for the solicitors for the plaintiff and appellant herein to read approximately three thousand pages of typewritten evidence taken herein, and from which said solicitors for the plaintiff and appellant prepared a narrative statement of evidence consisting of
831 more than five hundred typewritten pages; that said plaintiff and appellant has been required to, and has prepared numerous other papers and pleadings required to be prepared in order to perfect the said appeal, and that said plaintiff and appellant has been required to, and has prepared copies of all pleadings, papers and other documents which the parties hereto desire to have, and will have included in said record; that said plaintiff and appellant has practically completed the preparation of said record on appeal, but will be unable to have same completed in time for the same to be docketed and the record thereof filed with the Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri, on or before the 28th day of September, A. D. 1925, for the reason that many of the papers and pleadings so prepared, as aforesaid, must be proof read and compared with the originals by the Clerk of the United States District Court for the District of Wyoming before the same can be transmitted by him to the United States Circuit Court of Appeals for the Eighth Circuit, and that he will be unable to so compare and proof read said pleadings and papers in time to permit the same to be transmitted to the Clerk of the United

States Circuit Court of Appeals for the Eighth Circuit, and received by him on or before the 28th day of September, A. D. 1925, but that if the time within which to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit be enlarged to and including the 18th day of October, A. D. 1925, the said plaintiff and appellant will be able to, and will have said cause duly docketed and the record thereof filed with the Clerk of the said Circuit Court of Appeals for the Eighth Circuit, on or before said date.

ALBERT D. WALTON

Subscribed in my presence and sworn to before me this 24th day of September, A. D. 1925.

(Seal) R. O. CLOSE
Notary Public.

My Commission expires July 24, 1928.

832 Endorsed: Filed in the District Court on Sep. 25, 1925.

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833 Order enlarging Time within which to Docket Case and File Record thereof in United States Circuit Court of Appeals.

The above entitled matter coming on to be heard before the Court upon the motion of the plaintiff and appellant for an order enlarging the time within which the above entitled cause may be docketed and the record thereof filed with the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, and the defendants and appellees consenting thereto, and good cause being shown:

It Is Ordered that the time within which the above entitled cause may be docketed and the record thereof filed with the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to the citation on appeal issued herein, be, and the same hereby is, enlarged and extended to and including the 18th day of October, A. D. 1925.

Dated this 25th day of September, A. D. 1925.

T. BLAKE KENNEDY
Judge, United States District Court for the District of Wyoming.

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835 Election as to Printing.

To the Clerk of the District Court of the United States for the District of Wyoming:

You are hereby notified that The United States of America by its solicitors, Atlee Pomerene and Owen J. Roberts, Special Counsel, and Albert D. Walton, United States Attorney for the District of Wyoming, elects to take and file in the Appellate Court, to be printed under the supervision of its Clerk, under its rules, a transcript of the record requisite for the hearing of the case in that Court.

ATLEE POMERENE
OWEN J. ROBERTS
Special Counsel

ALBERT D. WALTON
United States Attorney for the District of Wyoming.
Solicitors for the Plaintiff.

836 Endorsed: Filed in the District Court on Sep. 25, 1925.

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837 Praecipe.

To the Clerk of the said Court—Sir:

You will please prepare a duly authenticated transcript of the entire record in the above entitled cause for an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, excluding the formal and immaterial parts of all exhibits, documents, and other papers introduced therein, in accordance with Rule 76, to-wit:

1. Bill of Complaint.

2. Order of Court, dated March 13, 1924, appointing Receiver and granting temporary injunction.

3. Answer of Mammoth Oil Company.

4. Answer of Sinclair Crude Oil Purchasing Company.

5. Answer of Sinclair Pipe Line Company.

6. Motion of Defendant, Mammoth Oil Company, for Continuance, filed September 17, 1924, together with Affidavit of Geo. P. Hoover and Affidavit of G. T. Stanford, attached to and made a part of said Motion.

7. Order of Court, dated September 17, 1924, denying motion of Defendant, Mammoth Oil Company, for Continuance.

8. Motion for continuance filed September 25, 1924.

9. Order of continuance entered September 25, 1924.

838 10. Petition for commission to take testimony filed October 18, 1924, and order thereon.

11. Motion for continuance filed December 20, 1924, an Affidavit of Atlee Pomerene and Owen J. Roberts in support of said motion.

12. Copy of affidavit of Atlee Pomerene and Owen J. Roberts under date of September 24, 1924, filed in the Supreme Court of the Province of Ontario and attached to and made a part of the foregoing affidavit.

13. Judge's memorandum opinion on motion for continuance of December 26, 1924.

14. Order granting motion for continuance, dated December 26, 1924.

15. Motion for continuance filed February 23, 1925.

16. Affidavit of Atlee Pomerene and Owen J. Roberts, and separate affidavit of Owen J. Roberts, in support thereof, filed February 26, 1925.

17. Affidavit of E. G. McMillan in support thereof, filed February 26, 1925.

18. Matter appearing in transcript of argument, of motion for continuance, of February 26, 1925, as follows: Beginning with last paragraph on page 154 of stenographer's transcript, and running to end of first paragraph on page 162; that is, to the end of the paragraph ending before the words "Mr. Lacey: May it please the Court"; beginning at page 175, second paragraph from bottom which begins, "Mr. Walton: If the Court please," to bottom of page 189.

19. Judge's memorandum and order denying motion, dated February 27, 1925; and exception thereto.

20. Memorandum opinion of Court filed June 19, 1925, dismissing bill of complaint.

21. Petition of plaintiff to re-open case, filed July 6, 1925.

22. Oral opinion of Court denying plaintiff petition to re-open case.

23. Order of Court refusing petition to re-open case; and exception thereto.

24. Findings of Court and decree filed June 19, 1925.

25. Statement of the proceedings and evidence under Rule 75.

839 26. Petition for appeal.

27. Order allowing appeal.

28. Assignments of error.

29. Citation on appeal and proof of service thereof.

30. Plaintiff's motion for enlargement of Time within which to docket case and file record in United States Circuit Court of Appeals.

31. Order enlarging time within which to docket case and file record in United States Circuit of Appeals.

32. Election as to printing.

33. This praecipe and proof of service thereof.

34. Clerk's certificate.

ATLEE POMERENE
OWEN J. RROBERTS
Special Counsel.

ALBERT D. WALTON
United States Attorney for the District of Wyoming.
Solicitors for the Plaintiff.

Due and legal service of the within pracipe and receipt of a copy thereof is hereby acknowledged this 25th day of September, A. D. 1925.

MARTIN W. LITTLETON, GEO. P. HOOVER G. T. STANFORD, R. W. RAGLAND, J. W. ZEVELY, CRAVATH, HENDERSON & DE GERSDORF,
HERBERT V. LACEY & JOHN W. LACEY.
Solicitors for Appellee, Mammoth Oil Company.

RALPH W. GARRETT
EDWARD H. CHANDLER
Solicitors for Appellees, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company.

840 Endorsed: Filed in the District Court on Sep. 25, 1925.

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914 Certificate.

In the District Court of the United States for the District of Wyoming.

The United States of America, Plaintiff,
No. 1431 vs. In Equity.
Mammoth Oil Company, a corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware; and Sinclair Pipe Line Company, a corporation of the State of Maine, Defendants.

I, Charles J. Ohnhaus, Clerk of the District Court of the United States for the District of Wyoming, do hereby certify the above and foregoing pages one to nine hundred and sixteen, both inclusive, to be a true, correct and complete transcript copy of the Bill of Complaint; Order of Court, dated March 13, 1924, appointing Receiver and granting temporary injunction; Answer of Mammoth Oil Company; Answer of Sinclair Crude Oil Purchasing Company; Answer of Sinclair Pipe Line Company; Motion of Defendant, Mammoth Oil Company, for Continuance, filed September 17, 1924, together with Affidavit of Geo. P. Hoover and Affidavit of G. T. Stanford, attached to and made a part of said motion; Order of Court, dated September 17, 1924, denying motion of Defendant, Mammoth Oil Company, for Continuance; Motion for Continuance filed September 25, 1924; Order of continuance entered September 25, 1924; Petition for commission to take testimony filed October 18, 1924, and order thereon; Motion for continuance filed December 20, 1924, and Affidavit of Atlee Pomerene and Owen J. Roberts in support of said motion; Copy of affidavit of Atlee Pomerene and Owen J. Roberts under date of September 24, 1924, filed in the Supreme Court of the Province of Ontario, and attached
915 to and made a part of the foregoing affidavit; Judge's memorandum opinion on motion for continuance of December 26, 1924; Order granting motion for continuance, dated December 26, 1924; Motion for continuance filed Feb-

ruary 23, 1925; Affidavit of Atlee Pomerene and Owen J. Roberts, and separate affidavit of Owen J. Roberts, in support thereof, filed February 26, 1925; Affidavit of E. G. McMillan in support thereof, filed February 26, 1925; Matter appearing in Transcript of Argument, of motion for continuance, of February 26, 1925, as follows: Beginning with last paragraph on page 154 of stenographer's transcript, and running to end of first paragraph on page 162; that is, to the end of the paragraph ending before the words "Mr. Lacey: May it please the Court"; beginning at page 175, second paragraph from bottom which begins, "Mr. Walton: If the Court please", to bottom of page 189; Judge's Memorandum and order denying motion, dated February 27, 1925; and exception thereto; Memorandum opinion of Court filed June 19, 1925, dismissing bill of complaint; Petition of plaintiff to re-open case, filed July 6, 1925; Oral opinion of Court denying plaintiff's petition to re-open case; Order of Court refusing petition to re-open case; and exception thereto; Findings of Court and Decree filed June 19, 1925; Statement of the proceedings and evidence under Rule 75; Petition for appeal; Order allowing appeal; Assignments of error; Citation on appeal and proof of service thereof; Plaintiff's motion for enlargement of Time within which to docket case and file record in United States Circuit Court of Appeals; Order enlarging time within which to docket case and file record in United States Circuit Court of Appeals; Election as to printing; Praecipe for Transcript, and proof of service thereof; in case No. 1431 Civil, the United States of America, Plaintiff, vs. Mammoth Oil Company, a corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware, and Sinclair Pipe Line Company, a corporation of the State of Maine, Defendants, lately pending in this Court.

916

Seal
U. S. District Court,
Dist. of Wyoming.

In Testimony Whereof, I do hereunto sign my name and affix the seal of said Court at Cheyenne, in said District, this 26th day of September, A. D. 1925.

CHARLES J. OHNHAUS,
Clerk of the District Court of the United States for the District of Wyoming.

Filed Sep. 28, 1925. E. E. Koch, Clerk.

792 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Mr. Atlee Pomerene and Mr. Owen J. Roberts as Counsel for Appellant.)

United States Circuit Court of Appeals, Eighth Circuit.

United States of America, Appellant,
No. 7188. vs.
Mammoth Oil Company, et al.

The Clerk will enter my appearance as Counsel for the Appellant.

ATLEE POMERENE,
OWEN J. ROBERTS.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 13, 1925.

(Appearance of Mr. Albert D. Walton, U. S. Attorney, as Counsel for Appellant.)

The Clerk will enter my appearance as Counsel for the Appellant.

ALBERT D. WALTON,
United States Attorney
District of Wyoming.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 30, 1925.

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793 (Appearance of Mr. Edward H. Chandler and Mr. Ralph W. Garrett as Counsel for Appellees Sinclair Crude Oil Purchasing Co., et al.)

The Clerk will enter our appearance as Counsel for the Appellees, Sinclair Crude Oil Purchasing Company, and Sinclair Pipe Line Company, only.

EDWARD H. CHANDLER,
RALPH W. GARRETT,
714 Sinclair Bldg., Tulsa, Oklahoma.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 19, 1925.

(Appearance of Mr. D. A. Moffatt and others as Counsel for Appellee Mammoth Oil Company.)

The Clerk will enter my appearance as Counsel for the Appellee, Mammoth Oil Company.

D. A. MOFFATT,
J. W. ZEVELY,
R. W. RAGLAND,
GEORGE P. HOOVER,
G. T. STANFORD,
MARTIN W. LITTLETON,
HERBERT V. LACEY,
JOHN W. LACEY.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 24, 1925.

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794 (Order of Submission.)

May Term, 1926,

Monday, May 17, 1926.

This cause having been called for hearing in its regular order, upon application of counsel five and one-half hours are allowed for oral argument and argument was commenced by Mr. Owen J. Roberts, Special Counsel for the Government, continued by Mr. Edward H. Chandler for the appellees Sinclair Pipe Line Company and Sinclair Crude Oil Purchasing Company, by Mr. Martin W. Littleton and Mr. John W. Lacey for the appellee Mammoth Oil Company and continued by Mr. Atlee Pomerene, Special Counsel for the Government.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

United States Circuit Court of Appeals
EIGHTH CIRCUIT.

No. 7188.—September Term, A. D. 1926.

United States of America, Appellant,
vs.
Mammoth Oil Company, et al., Appellees.

Appeal from the District Court of the United States for the District of Wyoming.

Mr. Owen J. Roberts and Mr. Atlee Pomerene (Mr. Albert D. Walton was with them on the brief), for appellant.

Mr. Martin W. Littleton, Mr. John W. Lacey and Mr. Edward H. Chandler (Mr. George P. Hoover, Mr. G. T. Stanford, Mr. Herbert V. Lacey, Mr. R. W. Ragland, Mr. J. W. Zevely, Mr. Ralph W. Garrett and Messrs. Cravath, Henderson & DeGersdorff were with them on the brief), for appellees.

Before Kenyon and Van Valkenburgh, Circuit Judges, and Cant, District Judge.

Kenyon, Circuit Judge, delivered the opinion of the Court.

This suit is one in equity brought by the United States in the District Court of the United States for the District of Wyoming, to secure the cancellation of a certain lease of date April 7, 1922, made by the United States with the Mammoth Oil Company, one of the appellees, for the development and exploitation of the oil and gas within Naval Petroleum Reserve No. 3 in Natrona County, Wyom-

ing, embracing approximately nine thousand acres, commonly known as Teapot Dome; also to secure the cancellation of the contract supplemental to said lease signed February 9, 1923, between the same parties, on the ground (a) that the lease and supplemental agreement were fraudulently secured as a result of a conspiracy between Albert B. Fall, the then Secretary of the Interior, and Harry F. Sinclair, organizer of, and owner of all the capital stock of, the Mammoth Oil Company, who negotiated the lease on behalf of said Company, and (b) that the lease and supplemental agreement were without authority of law and contrary thereto.

March 13, 1924, a temporary restraining order and one appointing Receivers for the property involved were entered. Answers were filed by all defendants and the case was tried in March, 1925, after two continuances had been granted to the United States of America, appellant, (so hereinafter designated). The trial Court held against the contentions of the United States and decided that the lease and supplemental agreement were not procured by fraud; that there was no conspiracy between Fall and Sinclair to defraud the United States or otherwise, and that both the lease and agreement were authorized by a special Act of Congress which took the matter out of the operation of general laws. Numerous findings of fact were made by the Court, and the bill was dismissed on the merits. Prior to trial the appellant attempted to secure a continuance in order to procure the evidence of certain witnesses residing in Canada, particularly one H. S. Osler. The Court refused the request for continuance, and denied the petition to re-open the case after trial and before decree in order to permit the United States to then secure the evidence of the said Osler and other Canadian witnesses, the Appellate Court of Ontario having in the meantime held that answers must be made to the questions theretofore propounded to Osler in the attempt to take his evidence prior to trial.

Sixty-four assignments of error are presented. They relate to the validity of the Executive Order of President Harding of May 31, 1921, under which the administration of Naval Reserves was committed to the Secretary of the Interior; to the question of alleged fraud; to the action of the Court in striking from the record certain exhibits and testimony; to the action of the Court in sustaining the refusal of M. T. Everhart, son-in-law of Secretary Fall,

to testify on the ground of incriminating himself; to alleged abuse of discretion in denying the motion for continuancee, and in refusing to re-open the case after hearing and before decree in order to secure the evidence of said Osler.

The vitally important questions presented may be grouped as follows:

(a) Was there authority of law to make the lease of April 7, 1922, and the supplemental agreement of February 9, 1923, and were they made in compliance with law?

(b) Were the lease of April 7, 1922, and the supplemental agreement of February 9, 1923, procured by fraud, as claimed by the appellant?

(c) Was there an abuse of discretion in not granting the continuance asked for to secure certain evidence or in refusing to re-open the case for that purpose?

I.

History and Facts.

It is advisable briefly to review the situation with reference to its historical aspect and the matters leading up to the execution of the lease and supplemental agreement. What the policy of the Federal Government may have been as to oil and mineral lands in the past, or whether it had any policy, may not be clear. However, on September 27, 1909, a Federal Order was issued withdrawing as part of the public domain part of the oil lands now constituting a portion of Naval Reserve No. 3, the subject of this controversy. June 18, 1910, another Executive Order was issued to the same effect covering other lands now included in said Naval Reserve No. 3. April 30, 1915, Naval Petroleum Reserve No. 3 was created by Executive Order. The General Leasing Act applying to oil and gas lands became a law February 25, 1920, c. 85, Sec. 1-38, 41 Stat. 437, (Comp. Stat. Cumulative Supp. 1923, Section 4640¼ to 4640¼ss). After the passage of this Act it was reasonably probable that the Salt Creek Field bordering Naval Reserve No. 3 would be partially if not entirely developed, and that this would probably affect the question of drainage as to said Naval Reserve. Other Naval Reserves would also be affected by development of adjacent territory.

Actuated presumably by said situation Congress passed the Act of June 4, 1920, c. 228, Sec. 1, 41 Stat. 813, (Comp. Stat. Consolidated Supp. 1923, Chapter 6, Section 2804i). This section was contained in the Naval Appropriation Act of June 4, 1920, and is as follows:

"The Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an act of Congress approved February 25, 1920, entitled 'An Act to provide for the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain,' or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States: And provided further, That the rights of any claimant under said Act of February 25, 1920, are not affected adversely thereby: And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922; Provided further, That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct."

Prior to the time that Mr. Denby and Mr. Fall became respectively on March 4, 1921, Secretaries of the Navy and of the Interior, some leases requiring drilling had been made by the retiring Secretary of the Interior for oil drilling on lands in the Salt Creek Field, and he had also offered other leases for sale at public auction subsequently to be held. In May, 1921, Secretary Denby suggested to the President that the Secretary of the Interior be placed in charge of the administration of the Naval Reserves. Secretary Fall on May 11, 1921, wrote to Secretary Denby concerning the matter, and enclosed a letter for him to sign and send to the President, together with an Executive Order for the President's signa-

ture, placing in the Interior Department the control and development of the Naval Reserves. There was opposition to this order in the Navy Department, and changes were made therein which were assented to by Secretary Fall. The order as finally agreed upon by Secretary Denby and Secretary Fall was taken to the President by Assistant Secretary of the Navy, Roosevelt, and signed by the President May 31, 1921. It is as follows:

"Under the provisions of the act of Congress approved February 25, 1920 (41 Stat. 437), authorizing the Secretary of the Interior to lease producing oil wells within any navy petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder or any part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat. 912), directing the Secretary of the Navy to conserve, develop, use and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves, the administration, and conservation, of all oil and gas bearing lands in naval petroleum reserves Nos. 1 and 2, California, and naval petroleum reserve No. 3 in Wyoming and naval shale reserves in Colorado and Utah, are hereby committed to the Secretary of the Interior subject to the supervision of the President but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in cooperation with the Secretary or Acting Secretary of the Navy. The Secretary of the Interior is authorized and directed to perform any and all acts necessary for the protection, conservation and administration of the said reserves subject to the conditions and limitations contained in this order and the existing laws or such laws as may hereafter be enacted by Congress pertaining thereto.

WARREN G. HARDING

The White House, May 31, 1921."

July 8, 1921, Secretary Fall wrote to Mr. Doheney who was interested in a lease upon other naval reserves as follows:

"There will be no possibility of any further conflict with Navy officials and this Department, as I have notified Secretary Denby that I should conduct the matter of naval leases under direction of the President, without calling any of his force in consultation unless I conferred with himself personally upon a matter of policy.

He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau of his department, but only with himself and such consultation will be confined strictly and entirely to matters of general policy."

On July 23, 1921, Secretary Fall wrote Secretary Denby as to the use of the Government's royalty crude oil in exchange for storage facilities. This letter is as follows:

"In connection with the recent authorization to the Pan-American Petroleum Company and the United Midway Oil Company to drill 22 offset wells in naval petroleum reserve No. 1, California, I would like to be advised, as promptly as possible, what arrangements the Navy desires to be made for the handling and disposition of its royalty oil from said wells, as well as from any other wells in naval reserves, to which the Navy is entitled to royalty in kind.

As the lease provides that purchasers will take care of the oil only for a limited period, it is important that provision be made to dispose of same promptly. I suggest the desirability of effecting an exchange of the crude oil received as royalty for an equivalent value of fuel oil, to be stored without expense to the United States by the other party to the exchange, preferably the exchange should be not only of crude oil for fuel oil in storage but for the tanks containing the Navy's stored oil. In other words, my suggestion is that the crude oil be exchanged for tanks and fuel oil, the title to both to be vested in the Navy as a result of the exchange.

If this plan meets with your approval, and you desire me to undertake to consummate the arrangement, I shall be glad to do so. In any event, I should like to hear from you on the subject as soon as possible."

Secretary Denby acquiesced in this suggestion by letter of July 29, 1921, as follows:

"Replying to your letter of the 23rd of July, I am glad to acquiesce in the suggestion made by you. It will be of great benefit to the Navy to have the royalty crude oil from wells on the naval reserves (both those already in operation and those to be drilled by the Pan American Petroleum Co. and the United Midway Oil Co.) exchanged for fuel oil at tidewater to be stored if practicable without expense to the Government, and if possible for tanks in which

such fuel oil can be stored. As the Navy has no appropriation to pay for the cost of construction of tank storage, the acquisition of tanks by exchange for crude oil from Naval Reserve wells will be most acceptable.

While these tanks could be readily utilized at any point at tidewater, the usefulness to the Navy would be increased if they could be located at any one of the following points: San Diego, San Pedro, San Francisco Bay, Puget Sound, Honolulu or Pearl Harbor, Hawaii.

In view of the greatly reduced amount available under the appropriation 'Fuel and transportation' for the present fiscal year, it would be of special benefit to the Navy to obtain royalty fuel oil at this time as such oil would not involve a charge against the appropriation."

Shortly thereafter Secretary Fall went West to confer with oil men and returned in October, 1921. In September, 1921, Harry Foster Bain, Director of the Bureau of Mines, Department of the Interior, made an inspection trip to the West and inspected Naval Reserve No. 3. He was accompanied by Arthur W. Ambrose, Chief Petroleum Technologist of the Bureau of Mines. They conferred at Denver with Mr. C. A. Fisher, a geologist, and Mr. Carroll H. Wegemann who had previously been connected with the Geological Survey, and had made an examination and report as to the geological structure of Naval Reserve No. 3. In September, 1921, Wegemann submitted a report to the Geological Survey differing somewhat from the previous report in that it placed the saddle between Salt Creek and Teapot Dome further south than in the preceding report. This later report states, "From consideration of the above facts, it is obvious that as wells are drilled along the northwest line of the naval reserve, part of the oil produced by these wells will be drawn from the naval reserve itself."

October 1, 1921, Admiral John K. Robison became Chief of the Bureau of Navy Engineering in charge of the Naval Petroleum Reserves, and on October 8, 1921, took personal charge of all Naval Petroleum Reserve matters on the part of the Navy. In October, 1921, Secretary Fall, Robison, Bain and Ambrose in conference discussed the Wegemann report recently submitted. As a result of this meeting, through instructions by Secretary Fall to the Direc-

tor of the Geological Survey, Mr. K. C. Heald was selected to make further investigation of the drainage question as affecting Teapot Dome. He submitted a written report on November 30, 1921, which contains the following:

"At the present rate of production a year or more must elapse before any part of the Reserve is appreciably damaged. Only one producing well has been drilled within one location of the line of the Reserve, and this well will not be likely to affect the territory more than 300 to 400 feet distant for some months. That part of the Reserve which it will affect must be regarded as one of its poorest portions.

* * *

No further leasing should be done. The lands last leased will permit some slight drainage of unleased land within the Reserve, but this is unavoidable if an effective barrier is to be maintained between the producing wells and the underground storage."

On October 25, 1921, Secretary Denby wrote Secretary Fall as follows:

"Rear Admiral J. K. Robison reported to me that as a result of his interview with you on Saturday, October 22, the following general agreement in connection with the naval petroleum reserves was reached:

1. That arrangements will be made by the Interior Department to have naval petroleum reserves Nos. 1 and 2 drilled with offset wells in every case where adjacent property is drilled.

* * *

7. That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only.

* * *

9. That the development of naval petroleum reserve No. 3 is not to be undertaken except to protect the Government against depletion of the reserve by other parties."

Secretary Fall ratifying this arrangement, replied:

"Washington, October 30, 1921.

My dear Mr. Secretary:

I have your letter of October 25 and have just consulted Admiral Robison about the subject matter.

Responding to your request for information as to whether the policies set forth in the letter are agreeable to the Department of the Interior, I can say without hesitation that they are entirely agreeable and will be carried out to the very best of my ability.

Of course, should any new matter come up at any time I will unhesitatingly and immediately consult you personally or through Admiral Robison.

As to the definite date when you may expect fuel oil as payment of your royalties, I can give you accurate information within a very few days.

Several of your wells are coming in, one or two are in, and we can exchange immediately for fuel oil certificates through which you can draw fuel oil as needed at Pacific ports.

Very sincerely yours,

ALBERT B. FALL."

The question of exchange of royalty crude oil for fuel was discussed November 29, 1921, at a meeting of the Navy Council, which consisted of chiefs of bureaus of the Navy, and as a result Admiral Robison on November 30, 1921, wrote to the Judge Advocate General as follows:

"It is proposed to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be later designated by the United States Navy. It is planned that the tanks in which this exchange oil shall be stored shall be provided by the lessor of the oil wells. Will this be legal, it being presumed that the oil in storage at Pearl Harbor, as well as the tanks, and appurtenances are to become the property of the United States."

The Judge Advocate General on November 30, 1921, answered as follows:

"4. Answering your questions, specifically, you are advised,

(a) It would be legal to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be designated by the Secretary of the Navy under arrangement whereby the exchanged oil (shall) be stored in tanks provided by the lessee of the oil wells, such tanks and their appurtenances to become the property of the United States.

(b) It would be legal to use the royalty oil on board vessels of the United States Navy and if so used, it should be expended at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct, and should be debited at the rate so fixed by the Secretary to the appropriation 'Fuel and Transportation.' "

This opinion was approved by the Secretary of the Navy. Secretary Fall was familiar with a somewhat contrary opinion rendered by the counsel of one of the Companies interested in the Pearl Harbor tank-storage matter.

December 9, 1921, Assistant Secretary Roosevelt wrote Secretary Fall with relation to the storage of fuel oil in tanks at Pearl Harbor as follows: "In view of the fact that this project is embodied in the war plans of the Navy Department we request that all the matters in connection therewith be regarded as confidentially as possible."

December 31, 1921, Mr. Sinclair and his counsel, Mr. Zevely, visited Secretary Fall at his home at Three Rivers, New Mexico. The leasing of Naval Reserve No. 3 was discussed. After the visit of Sinclair and Zevely to New Mexico and before Fall's return to Washington, witness Eddy, who was in the General Land Office in charge of leasing oil lands, was instructed by Mr. Safford, Administration Assistant to Secretary Fall, to make a memorandum relating to claims of record on Teapot Dome, the same to be given to the Secretary upon his return. This investigation was conducted by Roy W. Tallman. His report January 12, 1922, referred to the report on the subject of one Glenn B. Morgan (formerly Mineral

Surveyor in the Department) of date July 26, 1917. In his report Tallman said:

"It may be stated that there are no mineral claims to any of the lands in the said Naval Reserve which deserve serious consideration."

When Secretary Fall returned to Washington on January 27, 1922, he had a conference with Bain, Ambrose and Robison, at which the subject of drainage on Naval Reserve No. 3 was again discussed. This conference was in the nature of a continuance of the October conference. The opinion of Ambrose and Bain, as expressed at this meeting, was according to Ambrose's testimony, "that in all probability the drainage at that time was not serious, but that, if the leases in the southern end of the Salt Creek Field were developed, that they would actually drain the second Wall Creek sand, and that as time went on, this drainage would become quite serious." Bain as to the conference testifies, "I certainly did not realize at that time that that conversation was going to dispose of 9,000 acres of oil land by lease. I know that in that conversation we did enter into the question of whether we ought to do something with regard to No. 3, that is, what they would do." Ambrose was of the opinion that the danger of drainage in Naval Reserve No. 3 was not immediately serious, but that it would become so as development under the leases of the Salt Creek Field proceeded; that it was not such as to necessitate a lease on April 7, 1922. He filed a report on the subject February 18, 1922, having been instructed by Secretary Fall to prepare a memorandum thereon. It contained this:

"In conclusion it is believed that if oil is found in the saddle in the Second Wall Creek Sand, the leases which have been granted along the northern zigzag boundary separating the two structures will result in drainage of this sand in the Teapot Dome during the next six or seven years to a point on the south section line of Section 28, T. 39 W., R. 78 W., and if conditions are favorable the productivity of the sand will be affected even farther to the south."

The question of the danger of drainage of Teapot Dome arose entirely as to the second Wall Creek sands. The first Wall Creek sand, according to estimates, contained between fifty and fifty five

million barrels of oil, and was sealed off by a water seal from the first Wall Creek sand in the adjoining Salt Creek Field, and was not subject to drainage. The second Wall Creek sand was estimated to contain about eighty-five million barrels.

After the conference in January, 1922, Robison reported to Secretary Denby that the danger of drainage to Reserve No. 3 was grave, and recommended that some action be taken. The Secretary became convinced thereof and instructed him to proceed to accomplish the opening of Teapot Dome Reserve as a whole. Robison's reasons for reaching his conclusion as to Teapot Dome, as stated in his testimony, were, "First there was the experience we had had in California, where in my opinion we had suffered the loss of several millions of dollars by failing, by delaying too long in putting down offset wells; second, there was what I regarded as a pressing national emergency regarding our state of security; third, and in connection only with the use of the word 'entire,' the leasing of the entire Teapot Dome, there was a conviction in my mind that by handling it as one matter we could make better terms than we could make if we handled it as a series of small affairs; that it would involve much less cost to us and much less trouble to the Government and would produce better terms. Further I was of the opinion that to do it in that way would be the only way in which we could secure the big capital expenditures that would be required on the part of the contractor to accomplish some of the, perhaps, over-ambitious ideas that I had. Those considerations were the major ones that actuated me. If they were not the only ones, they are the only ones that I now recall. They were all potent in reaching that decision."

Shortly after the decision was reached to open and develop the entire Reserve No. 3, Secretary Fall, Sinclair, Zevely and Robison had a meeting in Fall's office and discussed the subject of a lease thereof. Robison was instructed by Secretary Fall to set forth the Navy's requirements as to a lease. He advised Sinclair that a pipe line must be constructed of adequate capacity to care for the production of the field; that the proceeds from the royalty crude oil should be used in the erecting and building of specified storage

facilities on the Atlantic coast; that the royalties were not to be taken in cash because the cash would have to be covered into the United States Treasury. Robison at that time had no notice as to the outstanding placer mining claims. February 3, 1922, Sinclair submitted a tentative proposition to the Secretary of the Interior as to the terms on which he would undertake the lease. This contained an undertaking to quiet the outstanding placer mining claims known as the Pioneer and Belgo claims. Negotiations continued respecting the terms of the lease over a considerable period of time. There was extended discussion as to the subject of royalties. Likewise the rate of exchange of royalty crude oil for fuel oil. Secretary Fall instructed Ambrose (Sinclair and Zevely being present in his office) to prepare a rough draft of a lease embodying the terms of the proposed lease. The lease was prepared chiefly in the Washington office of Mr Zevely. Mr. G. T. Sanford, also counsel for Mr. Sinclair, attended to the "mechanics of the lease." Fall dictated the preamble and settled the questions that arose, inserted something in the contract with respect to the common carrier, and made changes in the wording of the oil certificates. The draft of this lease was not submitted to any lawyer in the department of the Interior for an opinion thereon. February 28, 1922, the Mammoth Oil Company was incorporated by Sinclair, he being the owner of all its capital stock. While the lease and the subject thereof were under negotiation there was pending in the Department of the Interior application for leases by the Pioneer and Belgo Companies under the Leasing Law of February 25, 1920. The officers of these companies came to Washington and entered into negotiations with Sinclair for sale of their placer mining claims, and a written contract was made dated March 11, 1922, by Mammoth Oil Company with the Pioneer and Belgo Companies, claimants, providing for the payment of the equivalent of a million dollars for the claims, subject to the execution of the lease in question here, and quit claim deeds were executed by the Pioneer and Belgo Companies to the Mammoth Oil Company. On March 11, 1922, the Mammoth Oil Company applied formally to the Secretary of the Interior for a lease of the entire Petroleum Reserve No. 3, tendering quit claim deeds to the United States for the Pioneer and

Belgo claims, and accompanying the application with a letter from Sinclair to the Secretary of the Interior as follows:

"New York March 11, 1922.

To the Honorable,
The Secretary of the Interior.

Sir:

The Mammoth Oil Company has this date made application for an oil and gas lease covering that part of the public lands of the United States designated in Executive Order of withdrawal issued by the President of the United States on April 30, 1915, creating Naval Petroleum Reserve No. 3, Wyoming No. 1, involving 9,321 acres, more or less, situated in Natrona County, State of Wyoming, and more fully described in said application.

In the event said application is granted and a contract of lease is made between the United States and the Mammoth Oil Company covering said lands, I will become the owner of all the capital stock of said Mammoth Oil Company.

In consideration of the United States granting said application and making a contract of lease with the Mammoth Oil Company, I hereby personally guarantee the performance on the part of said Mammoth Oil Company of all its obligations under said contract of lease.

This guaranty shall become effective upon delivery to Mammoth Oil Company by the United States of said contract of lease.

Respectfully,

H. F. Sinclair."

Secretary Fall signed the lease on April 7, 1922, as Secretary of the Interior and also subscribed himself "and for the Secretary of the Navy." Secretary Denby formally signed the lease April 12, 1922, after having had it in his possession for a number of days.

The preamble of the lease dictated by Secretary Fall contained several paragraphs reciting the objects to be attained, as follows:

"Whereas the Government of the United States is charged with the duty of securing and storing a supply of fuel oil for naval pur-

poses, and is desirous of acquiring suitable storage for such fuel oil at points easily accessible to the United States Navy; and

Whereas the Government is desirous of avoiding in so far as possible any risks of loss of the supply of crude oil available for the United States Navy by a reduction of gas pressure resulting from the drilling and operating of wells located outside of Naval Reserve No. 3, Wyoming; and

Whereas the Government is desirous of creating a competitive market and securing the best prices obtainable for royalty oil received and to be received by the Government of the United States from the public domain in the Salt Creek field in Wyoming; and

Whereas the Government is desirous of exchanging crude oil that may be received by it as royalty from the said Naval Reserve No. 3, for fuel oil for the use of the United States Navy, and is desirous of securing adequate storage facilities for the storing of such fuel oil as is received by it in exchange for said crude oil over and above the requirements for use of the United States Navy."

Article 1 provides for the leasing of the lands comprising Teapot Dome to the Mammoth Oil Company.

Article 2 provides for bond and the sinking of certain test wells and operations concerning the construction of a pipe line, additional wells and fixing royalties to be paid, and that in lieu of delivering royalty oil to the lessor in kind, the lessee shall issue oil certificates to the lessor as evidence thereof. The lease contains this provision:

"The lessee agrees, if and when requested so to do by the lessor, to construct or to pay the cost of construction of steel storage tankage up to but not in excess of such an amount as shall be estimated to be necessary or required for the storage by the lessor of the fuel oil to be received by it as hereinbefore provided in exchange for royalty crude oil from the lands hereby leased; said storage to be constructed as and when the same shall become necessary or shall be required for the storage of such fuel oil so delivered by the lessee or its nominee, and said storage to be located at points designated by the lessor; the cost of such tankage to be liquidated by lessor by delivering to the lessee or its nominee crude oil certificates hereinbefore referred to, said certificates so delivered to be of the face

amount in value equal to the cost of such tankage for which the lessee or its nominee shall have paid or become liable."

No public notice of the intent to lease Teapot Dome was ever given. The representatives of various oil companies learning in some way that there was a prospect for the lease of the Dome wrote to or called upon Secretary Fall or other officials of the Navy or Interior Departments. All were unsuccessful except two parties, viz., John C. Shaffer and possibly Gerald Hughes. Secretary Fall suggested to Sinclair that he wanted Shaffer to have two hundred acres of Teapot Dome Reserve and Gerald Hughes eighty acres. After conferences between Sinclair and Shaffer it was agreed that Shaffer should have approximately four hundred acres, the record not disclosing the exact amount. Shaffer wired Fall March 23, 1922, thanking him for his interest and help in the matter. Whether Hughes received any of the leasehold the evidence does not indicate. The oil interests applying to Secretary Fall for leases on parts or all of Teapot Dome were the following:

The Producers and Refiners Corporation of Wyoming, a company with a capital of more than fifty million dollars, was represented by one Frank E. Kistler, who called on Assistant Secretary Finney in March, 1922, to discuss the matter. Finney referred him to Secretary Fall, who informed him he was not ready to receive applications or to consider the leasing of Reserve No. 3, but promised to notify him and give him an opportunity to bid on the Reserve if "he did decide to lease." Kistler heard nothing further until he saw in the newspapers that a lease of Teapot Dome Reserve had been made to the Mammoth Oil Company;

Mr. Amos L. Beaty, President of the Texas Company, with a capital of approximately one hundred and sixty-five million dollars, sought an interview with Secretary Fall on the subject of leasing Teapot Dome, and had the same on March 30, 1922. Secretary Fall informed him that he had a satisfactory proposition from Sinclair, but he would be glad to have the Texas Company submit a bid. Secretary Fall also advised him of the outstanding placer mining claims on the reserve and that it would be his policy to require that these be satisfied, and that the company acquiring and taking care of them would be given preference treatment. He also advised him that Sinclair had acquired these claims. There was some tele-

graphic correspondence between Secretary Fall and Beaty with reference to Salt Creek prospects;

Birch Helms, Vice President of the Texas-Pacific Coal and Oil Company on or about September 1, 1921, called on Assistant Secretary of the Navy Roosevelt and Judge Finney, Assistant Secretary of the Interior, in regard to leasing of Teapot Dome. He was informed that it was not to be leased. In April, 1922, he called on Secretary Denby with relation to the same matter. Secretary Denby informed him it was out of his hands and in the hands of the Interior Department. He saw Secreary Fall on or about April 10, 1922. Fall told him he would entertain a bid from the Texas-Pacific Coal & Oil Company, first inquiring if it was in any way connected with the Standard Oil, as "he wished this contract to be made with a company independent of the Standard Oil." Helms knew nothing of the lease to the Mammoth Oil Company until April 19, 1922, when he noticed it in a newspaper report from Washington.

Some time after negotiating the lease the Government requested the Mammoth Oil Company, in the exercise of the option provided in the lease (hereinbefore set forth) to provide for the construction of steel storage tanks necessary to store the fuel oil which it elected to receive in exchange for royalty oil. Negotiations were entered into between representatives of the Mammoth Oil Company and of the United States respecting the preparation of a supplemental agreement to provide for the storage of fuel oil in accordance with said option. These negotiations culminated in the execution of what is known as the supplemental agreement of February 9, 1923. Secretary Denby and Secretary Fall signed the supplemental agreement on behalf of the United States. Robison testifies that before Secretary Denby signed it he had gone over it thoroughly and familiarized himself with it; that he assisted the Secretary of the Navy in doing this. This contract, which is inextricably interwoven with the lease, provides for the construction by the Mammoth Oil Company of storage tankage and facilities at the Navy Yard at Portsmouth, New Hampshire, the Naval Fuel Depot, Melville, R. I., Governor's Island, Boston Harbor, and Naval Fuel Station, Yorktown, Virginia.

Appellees, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, were made defendants because of certain rights

derived from the Mammoth Oil Company. Both companies have incurred heavy expenditures in carrying out their obligations to Mammoth Oil Company. The United States alleged in its complaint that both were trespassers. Their rights stand or fall with the lease and contract of the Mammoth Oil Company. We do not further set forth the facts shown by the evidence as of necessity they must be considered in the discussion subsequently of the question of fraud, and there is no need of duplication. The foregoing covers the important matters leading up to the execution of the lease and contract in question.

II.

Legality of the Lease and Contract

These instruments were made under the authority of the Act of Congress of June 4, 1920 (hereinbefore set out). The Government contends that this Act is not an independent Act; is dependent on other general statutes preceding it, and must be construed in connection therewith. Appellees' contention is that the Act is full and complete, covering without reference to other statutes the method of doing the things therein provided. The Act of June 4, 1920, deals entirely with the naval petroleum reserves. These had been only incidentally referred to, if not practically excluded from the Act of February 25, 1920. The purpose of the Act of June 4, 1920, was to preserve the oil in these naval reserves for the benefit of the Government in such manner as Congress at that time deemed wise, viz., to place the matter almost exclusively in the hands of the Secretary of the Navy. It is of vital importance that the Government's oil in these reserves shall not be drained away for the benefit of private enterprise, but that it shall be preserved in the interest of national defense. This Act is as broad as an Act dealing with this subject could well be. It confers upon the Secretary of the Navy wide discretion as to administering the naval reserves, directing him to take possession of the properties within the same as are or may become subject to the control and use by the United States for naval purposes, and "to conserve, develop, use and operate" these properties "in his discretion." He may do this directly or he may do it by "contract, lease or otherwise," and he is further given the right to use the oil that may be secured by contract, lease or otherwise, or to "store, exchange or sell" the same.

Counsel for appellees argue that the language of this Act compels the Secretary of the Navy to employ all of the methods suggested, and that the term "in his discretion" applies to the method by which he shall "conserve, develop, use and operate." We do not agree with this view. It is apparent that, although the conjunction "and" is used, Congress intended that the Secretary should employ any or all of these methods as his discretion should dictate. Certainly if the oil can be properly conserved in the ground the Secretary of the Navy is not under compulsion to develop the properties. What he does must be for the benefit of the United States. That is the limitation of his discretion. If he shall determine that the oil cannot be properly conserved within the ground, then he has the right to develop, use and operate the properties directly or by contract, lease or otherwise. Having decided in the exercise of a wise discretion that it is for the interest of the Navy, and therefore of the United States, to develop and operate the properties, he may do this directly, which will require the expenditure of money, or he may do it by contract or by lease. Having made a lease, which in its very nature implies the taking of the oil from the ground, and such oil being crude and not fuel oil in proper condition to be used by the Navy, he may store it. He may sell it, in which case the proceeds must be turned into the Treasury of the United States, or he may exchange the same. While appellant concedes that the right to exchange crude oil for fuel oil is proper and legal, it denies the right to exchange the crude oil for storage facilities for fuel oil.

If the Act of June 4, 1920, as it seems clear it did, authorized the Secretary of the Navy to store the fuel oil, it would follow that it could be stored at established fuel depots, and if none such existed then places for the storage of the oil would have to be fixed and provision made for storage tanks. It would not be an arbitrary discretion exercised by the Secretary of the Navy if he in exchanging royalty crude oil for fuel oil provided also for an exchange of crude oil for storage tanks. There was no restriction upon the Secretary of the Navy as to the amount of oil that he might have extracted from the ground either directly or by contract or lease. The argument does not appear to us sound that under this Act it must be held that the Secretary of the Navy could exchange oil for anything, such as battleships or airplanes, or else that it was limited to exchange of crude oil for fuel oil. If such limitation was in-

tended it would have been a simple matter to have expressed it in the Act. It is not for the Court to supply the same. The purpose of the Act was to protect the oil of the Government. It would not be in consonance with the purpose of the Act to exchange the oil for battleships or air planes, or land to raise a food supply for the Navy, or materials to weave cloth for the uniforms of marines, but it would be consonant with the purpose of the Act to provide storage places for the oil. And under the Act express authority is given to store the oil and gas products received from the Naval Reserves. It may be that the use of the oil certificates provided in the lease in payment for the construction of storage tanks was intended to prevent the proceeds of the sale of the oil going into the Treasury of the United States. If Congress, however, had passed an Act that permitted this, then the Navy Department had the right to exercise the power so granted.

Nor do we think the Act invaded the exclusive right of Congress to appropriate funds for naval uses. There is a distinction between the appropriation of moneys by Congress, and the use of Government property incidental to administration under an adequate grant of authority. We are convinced that the appropriation of $500,000.00 is not a limitation upon the construction of storage tanks. Certainly it does not limit the amount of royalty oil to be exchanged for fuel oil. The appropriation ended July 1, 1922, but the right to arrange for the extraction of oil in the method provided by the Act was not limited to July 1, 1922. If the Secretary of the Navy attempted to develop and operate the naval reserves directly this appropriation would undoubtedly be necessary to commence such operations. It would have been necessary then to call upon Congress for further money, but the appropriation was not necessary where the properties were to be developed by contract or lease. If the Secretary of the Navy should find it essential to immediately develop a naval reserve in order to prevent waste of the oil or depletion thereof by wells on adjacent property, and said oil could not be used for the current needs of the Navy, it would be his duty to store the same or sell or exchange it in his discretion. If it could not be sold it must be stored, and the appropriation of $500,000.00 under circumstances easily imaginable and entirely possible would obviously be inadequate to provide storage facilities, and were Congress not in session no relief from that source could be found. We think the appropriation in the Act re-

ferred to expenditures made necessary if the Secretary in his discretion entered into a direct development and operation of the properties.

That the Act of June 4, 1920, even though a rider to an appropriation bill, was complete in itself, and that it did not repeal, nor was it dependent on, other Acts with relation to the public lands, is our conclusion. It constitutes an exception thereto. In *Washington* v. *Miller*, 235 U. S. 422, 428, the Supreme Court said: "Where there are two statutes upon the same subject, the earlier being special and the later general, the presumption is, in the absence of an express repeal, or an absolute incompatibility, that the special is intended to remain in force as an exception to the general." In *Witte* v. *Shelton et al.*, 240 Fed. 265, 268, this Court said: "Specific legislation upon a particular phase of a single subject is not affected by a subsequent law relating to a general subject which neither refers to the earlier law nor is repugnant to nor inconsistent with it, but the two laws must stand together, the former as the law of its specific phase of the subject, and the latter as the general law relating thereto." *Walla Walla City* v. *Walla Walla Water Co.*, 172 U. S. 1; *Townsend* v. *Little & Others*, 109 U. S. 504, 512; *Kepner* v. *United States*, 195 U. S. 100, 125; *Rodgers* v. *United States*, 185 U. S. 83, 87; *Hemmer* v. *United States*, 204 Fed. 898, 903; *United States* v. *Matthews*, 173 U. S. 381.

This special statute, not repealing the general statutes, the two stand together, one as the law relating to a special thing, viz., the naval reserves,—the other relating to general public land matters. It was therefore unnecessary that there be competitive bidding or advertising as to the making of the lease and contract, and other statutes with relation to the method of transacting the general public business of the United States were not applicable to this situation, the special statute fully covering the same.

It is urged that the lease is void because the Secretary of the Navy had abdicated the powers confered on him by the Act. This record shows great activity on the part of Secretary Fall in leasing Naval Reserve No. 3, and more or less passivity on the part of the Secretary of the Navy. Fall's letter to Doheny of July 8, 1921, (hereinbefore set out) and Denby's letter to Fall of October 25, 1921, in which he said: "That all leases and contracts, except as

provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only," would seem to come close to the assumption of exclusive authority by the Secretary of the Interior, and an abdication on the part of the Secretary of the Navy of the powers granted by the Act of June 4, 1920. The Executive Order of May 31, 1921, however, while giving great power to the Secretary of the Interior, did not of necessity remove absolutely the administration and control of these reserves from the Secretary of the Navy in such a way as to violate the Congressional Act. In fact, it seemed to retain just enough control in the Navy to be within the law of June 4, 1920. It provided that no general policy as to drilling or conserving lands located in a naval reserve should be changed or adopted except upon consultation, and in cooperation, with the Secretary or Acting Secretary of the Navy. The President had no authority to transfer from the Secretary of the Navy to the Secretary of the Interior powers which Congress had provided should be exercised by the former. The validity of this Executive Order does not seem to have been seriously questioned in the presentation of the case to this Court. It was proper, of course, for the Secretary of the Navy to act through competent subordinates. Of necessity this must be so. We conclude that enough control was exercised by the Secretary of the Navy through Admiral Robison to preclude a court from holding that the entire power granted by the Act of June 4, 1920, to the Secretary of the Navy had been assumed by the Secretary of the Interior.

The Act of June 4, 1920, creates no power in the Secretary of the Navy to establish fuel depots. That is a matter for the Congress, long so recognized. The lease, however, does not necessarily involve the establishment of fuel depots other than those existing. It does involve the providing of facilities for storage. Such storage might have been at fuel depots already established, and so construed the lease and contract are not open to the objection that by their terms they established fuel depots. Exceeding power granted does not destroy it. We are not satisfied that the acts contemplated by the lease were beyond the authority granted to the Secretary of the Navy, and the supplemental agreement must be considered as merely a necessary incident of the lease.

The work thus far done in constructing storage facilities has been at the Portsmouth Navy Yard. The record does not disclose whether or not this Navy Yard was a fuel depot.

The Circuit Court of Appeals for the Ninth Circuit in the *Pan-American Petroleum Co. et al.* v. *United States*, 9 Fed. (2d) 761, has held that contracts with reference to another naval reserve, executed under the authority of the same Act and involving a similar question of legality, were not authorized by the Act.

With great respect for the ability and learning of that distinguished Court, we find ourselves unable to arrive at the same conclusion as to this lease and contract. That case is now in the Supreme Court of the United States and this legal question will there be settled. We content ourselves with saying that on this branch of the case, as at present advised, we are in accord with the conclusion reached by the trial Court, that the authority granted by the Act of June 4, 1920, is sufficient to authorize the lease and contract in question.

III.

Fraud.

There is no charge of corruption in this case as to any of the officials of the Government, except as to former Secretary of the Interior, Albert B. Fall. It is the theory of the Government, bluntly stated, that Secretary Fall received from Harry F. Sinclair, sole owner of appellee, Mammoth Oil Company, a pecuniary consideration which influenced him in granting to said Oil Company a lease of Naval Petroleum Reserve No. 3, commonly known as "Teapot Dome." Counsel for the United States charge in their brief that Mr. Sinclair received as dividends from the Continental Trading Company, Ltd., $230,500.00 face value of United States Liberty First 3½% Bonds, which he turned over to Secretary Fall in May, 1922, as a bribe. This charge is as grave and serious an accusation as could be made against a public official, augmented by the fact that the official so charged was in a sense trustee for the people of the United States of their public lands. The case is one therefore in which not only the rights of the appellees and the Government of the United States are involved, but the interest of the public likewise.

Fraud is not to be presumed. To establish it the evidence must be clear, unequivocal and convincing, which means there must be sufficient competent evidence, as distinguished from mere suspicion, to satisfy the Court trying the question. That is the real test in cases where fraud is an issue. The burden is on the party alleging fraud to show the same. Circumstantial evidence may be sufficient, with the proper inferences to be drawn therefrom, to produce conviction in the minds of the triers of the question that fraud has been committed, yet if the circumstances are as consistent with honesty and good faith as with dishonesty, the inference of honesty should be drawn. While the law presumes the good faith of business transactions, fraud may be the only legitimate and proper inference that can be drawn from the circumstances disclosed. It is not necessary in a civil action that fraud be established beyond a reasonable doubt. These legal propositions, variously applicable to this case, are well established and are not, we assume, a matter of controversy here. *Jones* v. *Simpson*, 116 U. S. 609, 615; *Maxwell Land Grant Case*, 121 U. S. 325; *United States* v. *Hancock*, 133 U. S. 193; *United States* v. *Clark*, 200 U. S. 601; *Mastin et al.* v. *Noble et al.*, 157 Fed. 506; *Glaspie* v. *Keator et al.*, 56 Fed. 203; *Foster* v. *McAlester, et al.*, 114 Fed. 145; *Wilson* v. *Sands et al.*, 231 Fed. 921; *Folk et al.* v. *United States et al.*, 233 Fed. 177.

It is the general rule also as to circumstantial evidence that inferences of fact cannot be drawn from other inferences or rebuttable presumptions, but must arise from circumstances proved. Important inferences, however, may legitimately arise from slight circumstances. *United States* v. *Ross*, 92 U. S. 281; *Missouri, K. & T. Ry. Co.* v. *Foreman et al.*, 174 Fed. 377; *Manning* v. *Ins. Co.*, 100 U. S. 693; *Looney* v. *Metropolitan R. R. Co.*, 200 U. S. 480.

Persons engaging in conspiracies to commit fraud or to give or accept bribes do not publish their plans to the world and there is seldom anyone who can furnish direct evidence thereof.

If a Government official, engaged in making contracts for the Government, receives pecuniary favor from one with whom such contracts are made, a fraud is committed on the Government, and it matters not that the Government is subjected to no pecuniary loss or that the contract might have been an advantageous one to it. The entire transaction is tainted with favoritism, collusion and cor-

ruption, defeating the proper and lawful function of the Government. *United States* v. *Carter*, 217 U. S. 286; *Hass* v. *Henkel*, 216 U. S. 462; *Hammerschmidt* v. *United States*, 265 U. S. 182; *United States* v. *Pan-American Petroleum Co. et al.*, 6 Fed. (2d) 43; *Pan-American Petroleum Co. et al.* v. *United States*, 9 Fed. (2d) 761. Nothing is so essential to the perpetuity of representative government as fidelity of public officials. That the highest degree of fairness and honesty is required of them goes without saying, and the same standards apply to those with whom they deal.

In this case appellant claims that the facts and circumstances shown in evidence are sufficient to raise controlling inferences of fraud and bribery, and are inconsistent with any honesty of purpose on the part of Fall and Sinclair. The trial Court made findings of fact in this case, one of which is that there was no fraud connected with the negotiation or execution of the lease or the supplemental agreement. Where the trial Court has considered conflicting evidence and passed thereon its conclusion is entitled to great weight, and unless in the opinion of the Appellate Court it is against the weight of the evidence or is based on a mistake, will not be disturbed. *State of Iowa* v. *Carr et al.*, 191 Fed. 257; *Gorham Mfg. Co.* v. *Emery-Bird-Thayer Dry Goods Co. et al.*, 104 Fed. 243; *Thallman et al* v. *Thomas*, 111 Fed. 277; *United States* v. *Delatour*, 275 Fed. 137; *Schlafly* v. *United States*, 4 Fed. (2d) 195; *Fineup* v. *Kleinman et al.*, 5 Fed. (2d) 137.

Here the Appellate Court is not at the usual disadvantage which prevails when the trial Court determines the facts. The views of the trial Court are not controlling, as the situation presents, not so much a dispute as to the evidence or the veracity of witnesses, as it does an opportunity for differences of opinion with respect to the inferences to be drawn from all the circumstances appearing in the record. This Court has the same right to draw conclusions from the silence or evasiveness of witnesses as has the trial Court. *Central Improvement Co. et al.* v. *Cambria Steel Co. et al.*, 201 Fed. 811; *Central Improvement Co. et al.* v. *Cambria Steel Co. et al.*, 210 Fed. 696. Further, the conclusion of the trial Court as to fraud is a mixed one of law and fact.

We proceed therefore to a somewhat extended examination of this record, and attempt to sift from the mass of evidence the important and relative parts, assuming for said purposes that a part

at least of the records and exhibits stricken by the trial Court were proper evidence, a question subsequently discussed.

Whether the idea of placing the naval reserve control in the Department of the Interior originated with Secretary Denby, or was suggested to him by Secretary Fall, is a matter of conjecture. It is certain that Secretary Fall was not only willing, but anxious, that such suggestion of Secretary Denby be carried out. He prepared an order for the President to sign, sent the same to Secretary Denby with a letter for him to sign and send with the proposed Order to the President. This Order was changed at the instance of the Navy Department and then taken by the Assistant Secretary of the Navy to the President, who promptly signed it. Of course, this Executive Order must have been discussed by the President and the two Secretaries, as a matter of so great magnitude and so at variance with previous practices of the Government would not have been so readily signed without previous consideration and discussion. The question of its legality was not submitted to any attorney of the Navy or Interior Department, or the Department of Justice.

While Admiral Robison represented the Secretary of the Navy and took some part in negotiations leading up to the leasing of Naval Reserve No. 3, he generally coincided with the views of Secretary Fall. After Robison explained them to Secretary Denby, he likewise quite generally acquiesced therein. Secretary Denby was not present at any of the conferences with Sinclair or others in regard to leasing Teapot Dome. So far as he was concerned the idea of opening Teapot Dome as a whole had not been considered or conceived. He never met Sinclair prior to the time of the signing of the lease. His part seemed to consist merely in consenting to the plans and purposes originating with Secretary Fall. Seekers of information were all directed to Secretary Fall. The letter of Secretary Denby to Secretary Fall of October 25, 1921, shows the acceptance by the Navy of the dominance of the Interior Department. We quote therefrom:

"That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only."

This arrangement was ratified by Secretary Fall in a letter of October 30, 1921. Secretary Denby seemed to have so little information concerning the leasing of Teapot Dome that Secretary Fall thought it necessary to write him a long letter of date April 12, 1922, explaining the same. The evidence shows it was also explained to him by Admiral Robison before he signed the lease on April 12, 1922. No suggestions seem to have been made by him as to the lease. That Secretary Fall, as to this matter, dominated Secretary Denby, Admiral Robison and other Government officers, and practically controlled the action of the Navy Department as to the leasing of Teapot Dome is a conclusion difficult to escape under this record. As early as July, 1921, he wrote Edward L. Doheny, referring to the Secretary of the Navy, "He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau of his department, but only with himself and such consultation will be confined strictly and entirely to matters of general policy." He originated the idea of development of fuel oil storage plants. Secretary Denby acquiesced therein. He instructed Judge Finney, Assistant Secretary of the Interior, and Director Bain to look after the negotiations for the Pearl Harbor storage project, and advised them that he would deal with Naval Reserve No. 3 himself. He gave orders covering even the Navy Department, forbidding the giving out of information as to negotiations for Naval Reserve leases. He ordered the investigation of the Pioneer and Belgo placer mining claims. Practically all the conferring and negotiating for the lease of Teapot Dome were carried on by Secretary Fall. At some of the conferences with the Sinclair interests he was the sole representative of the Government. He dictated the preamble of the lease, acted for the Government in settling all disputed questions, and even assumed to sign the lease on April 7th, not only for himself, but subscribed also "and for the Secretary of the Navy." There seems to have been doubt whether it was necessary for the Secretary of the Navy to sign at all. With the Secretary of the Interior rested the right under the lease to suspend operations temporarily under the law; to consent to a termination of the lease or an assignment thereof; to place the value on gas and casing head gasoline. Practically all discretionary power under the lease was vested in Fall. The bond, and acceptance of Sinclair as security, seem to have been arranged by him.

April 13, 1922, he wrote President Harding enclosing copy of reply he had sent to Senator LaFollette who had requested of him copies of all Executive Orders relating to Naval Reserves 1, 2 and 3. In this he said: "Of course the matter of the process by which we are obtaining storage, etc., and the location of the storage, the contracts for the same, and in fact the plans of the Navy as they are being worked out by myself and Secretary Denby are military plans and, in my judgment, should not be given to Senator La-Follette or anyone else." In this letter he placed himself ahead of Secretary Denby in working out the plans of the Navy. The activities of the Secretary of the Interior in taking care of affairs entrusted by Congress to the Secretary of the Navy were decidedly unusual and indicated a deep interest therein.

Shortly after Secretary Denby had asquiesced in Secretary Fall's plan as to development of fuel oil storage plants Fall made a trip to the Pacific coast to talk over the matter with representatives of oil companies. He returned about the middle of October, 1921. The record does not show whether or not Fall met Sinclair in the West, but it is significant that upon his return the question of drainage in Teapot Dome, and the danger therefrom were again agitated. This had been considered prior thereto by some of the Government officials and a report had been made thereon by one Carroll H. Wegemann, at that time connected with the Department of the Interior. As a result of conferences it was decided to send some one to make an examination as to the question of drainage, and through the Bureau of Geological Survey one K. C. Heald was selected therefor. His report indicated no immediate danger of drainage. After this no one in the Geological Survey was further consulted on the subject. Director H. Foster Bain of the Bureau of Mines, and also Arthur W. Ambrose, Chief Petroleum Technologist of the Bureau of Mines, likewise gave some attention to the matter. They made a trip to the West and consulted with C. A. Fisher, a Geologist, and also with Carroll H. Wegemann, who was then out of Government service. After Fall's return in January from his home in New Mexico, where he was visited by Sinclair and his counsel, Col. Zevely, the drainage question was again taken up and it was concluded that it was acute. Secretary Denby under Robison's presentation of the question finally became convinced

and agreed to the development of Teapot Dome as a whole. Robison promptly reported this to Fall.

That there was remote danger of drainage of a portion of Teapot Dome by virtue of leases in the adjacent Salt Creek Field, is apparent from the record. However, the evidence clearly establishes that there was no immediate danger, and no need for haste. The drainage danger was unquestionably not imminent enough to force immediate action in the leasing of the entire property. It was a matter of five years or more, according to some of the testimony. At no time was the oil in the first Wall Creek sand, estimated to contain between fifty and fifty-five million barrels of oil, in danger of drainage. It was not until the full scheme of development of the entire reserve, with its attendant features, was suggested and became visualized, that these fears of drainage became acute. The drainage question is important only as bearing on the good faith of the lease. It offered an apparently valid reason for leasing the entire reserve, and was utilized in accomplishing that result.

On February 3, 1922, Sinclair and Zevely were at Secretary Fall's office. Robison was called in and requested to present the demands of the Navy in a lease of Teapot Dome. He did so, covering the question of a pipe line and of storage facilities to be constructed in exchange for royalty oil. Something was said concerning oil certificates in lieu of cash to avoid covering the cash into the Treasury of the United States. It is significant that after this meeting and on the very same day Sinclair submitted a complex, tentative proposition setting forth the terms and conditions upon which he would undertake the development of Teapot Dome, and in this agreed to quiet the Pioneer and Belgo placer mining claims which consisted of applications for leases made under the Act of February 25, 1920.

The Mammoth Oil Company, appellee herein, was incorporated on February 28, 1922, Sinclair owning the entire stock. On March 11, 1922, the Mammoth Oil Company formally applied for a lease of Teapot Dome and tendered quit claims of the Pioneer and Belgo claimants, they having made an optional sale to Sinclair contingent upon his obtaining the lease.

During the months of March and April, 1922, representatives of large oil companies either visited, or communicated with, Secretary

Fall for the purpose of ascertaining whether Teapot Dome would be leased. Among these companies were: the Producers and Refiners Corporation of Wyoming, the Texas Company, and the Texas-Pacific Coal and Oil Company.

The propositions of these various companies were not comprehensive and were more or less fragmentary and unsatisfactory, but it clearly appears that Sinclair was in a position of advantage by reason of the assignment to him of the placer mining claims which Secretary Fall made a condition precedent to leasing. These claims had been denied by former Secretary of the Interior, Payne. The Morgan report of July 26, 1917, and the Tallman reports of January 12, 1922, and March 10, 1922, stated they had no legal basis. Judge Finney, Assistant Secretary of the Interior, had also so found, and advised Secretary Fall that the claims "had no validity and no standing." The Morgan Report stated, "that there are no mineral claims to any of the lands in the said naval reserve which deserve serious consideration." Secretary Fall was fully advised of the situation as to these claims and knew they were illegal and practically dead. It was the Government's business to dispose of them—not to permit them to be used as instrumentalities to prevent a "square deal". Of course, making the acquisition of these claims a prerequisite of any lease, when Sinclair either had them or was in a preferred position to secure them, was a fraud as to other bidders, and in its effect removed them from the statue of qualified applicants. Other companies desiring to bid and obtain leases on Teapot Dome were not placed on the same footing with Sinclair. They were not advised as to the full scope of the contemplated plans, and consequently were not in position to make comprehensive propositions. It is obvious that disclosures to these companies of the entire plans relating to Teapot Dome were studiously avoided. Various statements were made to them that the Department had reached no decision; that the matter would later be discussed; that they would be advised when the Department was ready to act, and their attention was called to the Salt Creek Field and activities there invited. There was an utter lack of good faith in the matter. Shaffer, a newspaper man of prominence, apparently received different treatment. He made claim that he was entitled to certain acreage in Teapot Dome, and filed a written application. Secretary Fall's influence with Sinclair was such that Sinclair offered, at Fall's

request, to take care of Shaffer, not, however, to the full extent demanded. Just why Secretary Fall should interest himself in Shaffer's alleged claim which had no legal basis, is not clear, but it shows the close connection between Fall and Sinclair.

While there were undoubtedly inklings that Teapot Dome might be leased, as is indicated by the inquiries from various companies, the proceedings leading up to, concurrent therewith, and subsequent to the execution of the lease, were veiled in secrecy. In October, 1921, Secretary Fall and Robison had agreed on a policy of secrecy as to the naval reserves, Robison testifying that, "It was the intention that the public and Congress should not get knowledge of what was being done until it had in fact been done." He also testified: "On that day in January, Ambrose, Bain and I discussed the difficulties with regard to the exchange of oil for storage. At that time, or some other time, we discussed the fact that Congress would undoubtedly make trouble if the matter were brought to its attention. I was quite cognizant of the fact that Congress would feel that it ought to be consulted about the disposition of those reserves; that is Congress, or some members of Congress rather. I know I was practically alone in insisting that if Congress had passed a law that (vave) us definite power we would be recreant in our trust, if it was wise for us to exercise that power, if we failed to do so. My view was to be both wise and silent."

That the matter was not handled in the usual course of business in the routine of the Department of the Interior, is shown by Fall's Departmental Order of April 13, 1922, which recited:

"Memorandum:

Referring to constant requests for information concerning rumors or statements as to the dispositon of naval reserve oil lands:

The general policy in these matters has been given publicity. In carrying out this general policy as it is being carried out through the cooperation of the Navy Department and of the Interior Department, it is being handled by the Secretary of the Interior and the Secretary of the Navy but not in a routine manner by either department. The consequence is that the officials of the bureaus of either department are not able to give out any information whatsoever as to the detail of any plans of any kind or character."

This was circulated through the Interior Department and forwarded by Secretary Fall to Secretary Denby in a letter of date April 12, 1922, in which he said: "I have instructed my office force to give out nothing of the details of any of these contracts and to retain in a secure place the original contract with the deeds, etc., attached. This for the reason that it has been customary to file all contracts with the general files, where by inadvertance they might be subject to examination by parties not entitled to see them. I am particularly anxious that no details should be given out pending the final agreements upon the contracts for the construction of reservoir facilities in Hawaii."

The lease itself was drawn almost exclusively in the office of Col. Zevely, the personal counsel of Sinclair, and when executed was locked in Secretary Fall's desk with instructions that no information relative thereto be given out. Secretary Fall then departed for the West, and the key to the desk was left with Safford, his administrative assistant.

When Congressional agitation began relative to the lease Secretary Fall wired Safford to notify Sinclair to furnish a Security Company bond. Why Sinclair's personal bond after agitation was not as good security as before agitation does not appear.

The letter of Assistant Secretary Roosevelt, relied on to explain why matters were conducted in secret, related exclusively to Pearl Harbor. The evidence negatives any idea of a military need for secrecy in the leasing of Teapot Dome.

For some reason deceit was practiced as to Members of Congress, both by the Navy and the Interior Departments. March 24, 1922, Admiral Robison wrote Congressman Kelley, Chairman of the Sub-Committee of the House Committee on Naval Affairs:

"(e) That the development of Naval Petroleum Reserve No. 3 is to be undertaken only to protect the Government against depletion of the Reserve by other parties."

At this time it was known by Robison that the entire reserve was to be leased.

Senator Kendrick, whose secretary had attempted to secure information from the Interior Department on request of Leslie A. Miller of Wyoming concerning the leasing of Teapot Dome, re-

quested to be advised of anything that was being done. April 10, 1922, which was subsequent to the signing of the lease, Director Bain wrote to Senator Kendrick and enclosed a copy of the press memorandum of April 6, 1922, which was recited as follows:

"As yet, no definite contracts have been made along these or any other lines, for the development, use, storage, or any other purpose, in either Naval Reserve No. 1 or No. 2 in California, or No. 3 known as the 'Teapot Dome,' in Wyoming."

It is evident that this memorandum received by Senator Kendrick on April 10, 1922, was not candid or truthful as to the situation on that date, and was a deliberate attempt to deceive him. Bain testified he was not at liberty to write Senator Kendrick that the Teapot Dome lease had been signed. Bain, like others involved, was under the domination and direction of Secretary Fall. A memorandum was given out by the Interior Department on April 18, 1922, for the press, explaining in a general way the leasing of Teapot Dome, but not giving the details. Representative Mondell on April 14th received a wire from former Governor Brooks of Wyoming protesting against the purported lease. He called on the Assistant Secretary of the Interior, Judge E. C. Finney, and received the impression that it was not certain that the matter of the leasing of Teapot Dome had been fully settled by an executed and delivered document, and Mondell was left with the impression that the matter had not been fully concluded. April 19th Mondell again called upon Judge Finney and asked to see a copy of the lease of April 7, 1922. He did not succeed in seeing said lease in the office of the Secretary of the Interior, but called upon the Secretary of the Navy where he was permitted to read it. Senator Kendrick received a copy of the lease between April 25 and April 27, 1922.

When Senator Harreld asked Secretary Denby for a transcript of naval reserve leases executed subsequent to March 14, 1921, he replied, referring to the Executive Order of May 31, 1921, "Since that date the Navy Department is not in a position to give the details of leases that may have been executed."

Letters to Representative N. J. Sinnott and Representative James McClintic from the Navy Department were scarcely more enlightening than those received by Representative Kelley. They all show an

absence of frankness and a studied attempt to deceive, and keep information from, Members of Congress.

Judge Finney wrote Senator LaFollette with reference to the naval reserve matter that all leases were passed on by the legal staff of the Interior Department. He was accustomed to pass on leases made by the Interior Department and he had passed on practically all leases made since occupying the position of Assistant Secretary of the Interior, the exceptions being this one and the Doheny contract as to Reserve No. 1 in California. Neither the Solicitor of the Department of the Interior nor any other attorney in said Department, was asked to pass on the lease. Whatever information the Solicitor had about it seems to have come from one Col. Darden.

Not only was the information apparently to be kept from Members of Congress, but from the public as well. On April 6, 1922, an oil paper known as "The Inland Oil Index," wired Secretary Denby asking as to the purported leasing of Teapot Dome to the Sinclair interests. The Secretary of the Navy responded to this telegram on April 7, 1922, the very day the Secretary of the Interior signed the lease as follows:

"To Inland Oil Index, Casper, Wyo.

Matters connected with development of Naval Petroleum Reserves are being handled by the Secretary of the Interior Navy Department has made no contract for development of Teapot Dome.

Sec Nav"

Admiral Robison admits that the Department practiced deception in this, but justifies it upon the ground that the Inland Oil Index had no right to knowledge of what was being done in the Department. Even as late as April 25, 1922, the Interior Department was refusing to make public the terms of the Mammoth lease, although general information had been given in the press statement of April 18, 1922.

When Mr. John C. Shaffer on April 19, 1922, wrote Judge Finney requesting a printed copy of the lease, Judge Finney replied on April 25th as follows:

"Your letter of the 10th, requesting that I send you, if permissible, a copy of the contract between the Secretary of the Interior,

the Secretary of the Navy, and the Mammoth Oil Company, relative to Naval reserve, Wyoming, is received.

For military reasons, it has been deemed advisable not to make the full contract public at this time, and Secretary Fall, who is out of the city, has directed me not to give out copies of the contract at present. I enclose for your information, however, a copy of memorandum given to the press April 18; also copy of report to the Senate upon the so-called Kendrick resolution. If and when the contract is made public, we will be glad to furnish you with a copy of same."

In the transaction of public business there is no necessity for scheming, deception or double dealing, nor unless in well-recognized, exceptional matters,—for secrecy. There was no legitimate reason for such secrecy as was thrown around this transaction. Secrecy is an aid to corruption—publicity its foe. If the secrecy was not to veil an ulterior purpose it was, at least as to Congress, to ward off any investigation until after the leasing was completed.

Sinclair, as the testimony shows, secured by this lease rights of great value in an extensive oil field, concerning which Robison testified: "I knew that for years oil men were looking with covetous eyes on that field, and I thought that in view of the circumstances very favorable terms ought to be secured for the development of it." Sinclair received from the Sinclair Consolidated Oil Corporation 250,000 shares of common stock in exchange for 500,500 Class A shares and 1,500 Class B shares of Mammoth Oil Company stock, this lease being the only asset of said Company. The Sinclair Consolidated Oil Corporation stock issued in exchange had a market value of $34.00 a share. Sinclair by this exchange of stock received for approximately a one-fourth interest in the lease and contract, property of the value of more than $8,000,000.00. The leasehold rights were evidently therefore considered by him to be of a value of at least $32,000,000.00. Whether these valuable rights were obtained by bribery or other corruption it is clear that the lease was secured for Sinclair by the influence, aggressiveness and ability exercised by Secretary Fall in his behalf and that the entire situation was so dominated and manipulated by Secretary Fall as to make certain this result.

A company known as the Continental Trading Company, Ltd., of Canada, plays an important part in this case. As certain transactions with reference to the purchase of oil from the Humphreys Mexia Company and Humphreys Texas Company are connected with the affairs of this Canadian Company, we discuss them here. In November, 1921, A. E. Humphreys, connected with the Humphreys Mexia Company and the Humphreys Texas Company, began negotiations with one H. M. Blackmer concerning the sale of 33,333,333 barrels of oil. After several meetings the final one was held in New York on November 14, 1921. As to this Mr. Humphreys testifies: "After agreeing with Mr. Blackmer on the number of barrels they would purchase and the price they would pay I called Senator Thomas into the matter. We met Mr. Blackmer and these other gentlemen in the room of Mr. Blackmer at the Hotel Vanderbilt and we also met at the luncheon Senator Thomas spoke about. All the parties named, Mr. O'Neil, Mr. Sinclair, Mr. Stewart, Mr. Blackmer and Mr. Dawes were present."

Charles S. Thomas (former United States Senator, hereinafter referred to as Senator Thomas) was counsel for Mr. Humphreys. His testimony relative to the events of November 15, 1921, is as follows:

"About noon of that day I attended a lunch down at which a number of gentlemen connected with the matter were present. My recollection is that they were Col. Humphreys, R. W. Stewart of the Standard Oil of Indiana, James O'Neil of the Prairie Oil and Gas Company, Harry F. Sinclair of the Sinclair Crude Oil Purchasing Company and Mr. Harry M. Blackmer, who I think at that time was Chairman of the Board of the Midwest Refining Company. It may be that some others were present, but I cannot recall whether there were any others. At that time we discussed this sale of oil. The object of the meeting was to talk over the matter with respect to details of the transaction."

Col. Humphreys had, previous to the meeting, given Senator Thomas an outline of the agreement between himself and some of the gentlemen present. Senator Thomas testifies that Humphreys had agreed to sell "and these gentlemen or some of them had agreed to buy thirty million barrels of oil" from the Humphreys Companies; that "they also arranged for a second contract to be executed at the same time, to take effect upon the performance of the first,

which would also be confined to one-half of the output of the wells after the thirty million barrels had been paid for." It was finally agreed to make the amount 33,333,333 1/3 barrels so that the contract would be for the round sum of $50,000,000.00. Details were also discussed and it was agreed to meet the next morning at the Vanderbilt Hotel at the rooms of Mr. Harry M. Blackmer. The next morning at the Vanderbilt Hotel meeting Mr. Blackmer said to Senator Thomas that the vendee in the contract would be the Continental Trading Company of Canada. This was the first suggestion in the various meetings as to this Company. When Senator Thomas stated that he would have to inquire something about this Company, as it was a foreign corporation, the statement was made, presumably by Mr. O'Neil, that the Prairie Oil and Gas Company, and the Sinclair Crude Oil Companies were to guarantee the performance of the contract. This appeared to be satisfactory and the first draft of the agreement was prepared by Senator Thomas. Mr. Blackmer said the President of the Canadian Company would be present the next morning to sign the contract for that Company.

The oil to be delivered under the first contract was to be paid for at the rate of $1.80 per barrel. The second contract was between the Humphreys Mexia Company and the Humphreys Texas Company, vendors, and the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company, vendees. As to this it was agreed the purchase should be at the prevailing rate for crude oil at the time of delivery. The parties again being present the contracts were executed November 17, 1921. Osler signed as President of the Continental Trading Company, Ltd. Stewart, Sinclair, O'Neil, Blackmer and Humphreys were present. The first contract was guaranteed as to its performance by the Prairie Oil and Gas Company, signing by J. E. O'Neil, President, and the Sinclair Crude Oil Purchasing Company signing by H. F. Sinclair and R. W. Stewart. The second contract providing for the purchase of the oil at the posted field prices was executed on behalf of the Sinclair Crude Oil Purchasing Company, by Harry F. Sinclair and R. W. Stewart for the directors. While not directors, they represented the interests controlling that company. A third contract was also entered into on November 17, 1921, between the Continental Trading Company, Ltd., vendor, and the Prairie Oil & Gas Company and the Sinclair

Crude Oil Purchasing Company, as vendees, whereby the vendees agreed to purchase the said 33,333,333 barrels of crude petroleum sold by the Humphreys Company to the Continental Trading Company, Ltd., and to pay therefor $1.75 per barrel.

The two purchasing companies in this contract assumed the obligations of the Continental Trading Company, Ltd., under its contract with Humphreys. The contract of purchase between Humphreys and the Continental Trading Company, Ltd., called for payment on the 15th of each month for oil run in the previous month. The repurchase contract of the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company called for settlement with the Continental Trading Company, Ltd., for the same oil by the 10th of each month. Hence the Continental Trading Company was provided with a system by which it would have the money to pay its obligations to Humphreys five days before they fell due, and it had a clear profit of twenty-five cents per barrel. It does not appear why the sale from the Humphreys Company was not made directly to the Prairie Oil & Gas Company and the Sinclair Crude Oil Purchasing Company. It is apparent that there was a handsome profit for someone, presumably the Continental Trading Company, Ltd., in this peculiar transaction.

A large part of the profits, if not all, of the Continental Trading Company, Ltd., under its re-sale contract of November 17, 1921, were invested by Mr. Osler in the purchase of United States Liberty First 3½% Bonds. April 11, 1922, as President of this Company he requested the Dominion Bank Agency in New York City to purchase $300,000.00 of such bonds. Osler in his testimony claims to have no recollection of this. The evidence shows that these bonds were purchased from various New York brokers: April 13, 1922, $100,000.00 of them from Salomon Brothers & Hutzler of New York City. On the same date $100,000.00 worth under the respective numbers that appear in the record were purchased by the Dominion Bank Branch Agency from Walker Brothers of New York City. On April 17, 1922, $50,000.00 more were purchased from Walker Brothers by the same Agency. These bonds were delivered on May 8, 1922, by the Dominion Bank Branch Agency to Mr. Osler as President of the Continental Trading Company, Ltd. The Continental Trading Company, Ltd., purchased between February 15,

1922, and June 13, 1922, approximately $3,000,000.00 of United States Liberty First 3½% Bonds, necessarily out of the profits in the re-sale of the Humphreys purchases, which comprised the only business of this Company.

May 26, 1923, an agreement was executed whereby the Continental Trading Company, Ltd., assigned its contract of November 17, 1921, with the Humphreys interests to the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company. At that time some eight million barrels of oil had been delivered under the Humphreys contract of November 17, 1921, leaving some twenty-five million barrels still to be delivered to the Continental Trading Company, Ltd. As this oil had been re-sold to the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company on the same date at a profit of twenty-five cents per barrel there was still a profit to accrue to the Continental Trading Company, Ltd., of some $6,000,000.00 under its re-sale contract. Phillips, President of the Sinclair Crude Oil Purchasing Company, testifies that he understood the consideration for the assignment of the re-sale contract was $400,000.00. Shortly after this, viz., August 9, 1923, the Continental Trading Company, Ltd., wound up its affairs and went out of business. Its books were destroyed. Its work was finished.

Mr. M. T. Everhart, son-in-law of Secretary Fall, on May 29, 1922, appeared at the First National Bank of Pueblo, Colorado, where he handed to an employe of that bank, L. T. Rule, $90,000.00 of United States Liberty First 3½% Bonds, with the statement that they were the property of Secretary Fall, and were to be kept by the bank for Mr. Fall's account. On the same day Everhart delivered to the M. D. Thatcher Estate Company $140,500.00 of United States Liberty First 3½% Bonds. $200,000.00 of these bonds are identified in the record by comparing the coupon numbers thereof, as bonds purchased and delivered a short time before to Mr. Osler as President of the Continental Trading Company, Ltd. The entire lot of $340,000.00 of United States Liberty First 3½% Bonds were identified by the coupon numbers as bonds purchased for and coming into the possession of the Continental Trading Company, Ltd. About $230,000.00 of the $340,000.00 of bonds were deposited in the First National Bank of El Paso to the credit of Secretary Fall in October and November, 1922. The numbers of the bonds

noted on the deposit tickets identified $5,000.00 of them as coming out of the lot purchased from Salomon Brothers & Hutzler by the Dominion Branch Bank for the Continental Trading Company, Ltd., and $15,000.00 from those purchased from Rhoades & Company. $20,000.00 of the $90,000.00 lot of bonds were deposited to the credit of the Tres Ritos Cattle and Land Company in the First National Bank of Pueblo, Colorado, on October 23, 1922. The capital stock of this Company was owned, one-half by Fall and one-half by Everhart. These bonds were identified, $4,000.00 of them being bonds purchased from Rhoades & Company, and $16,000.00 of them being bonds purchased from Salomon Brothers & Hutzler for the Continental Trading Company, Ltd. The balance of this lot of bonds were deposited with the Exchange Bank of Carrizozo, New Mexico, to the credit of Secretary Fall on March 29, 1923. $25,000.00 of said bonds came from the Salomon Brothers & Hutzler purchase, and $25,000.00 from the Rhoades & Company purchase.

The $140,500.00 of bonds delivered to the M. D. Thatcher Estate Company by Everhart were sold and part of the proceeds used to liquidate the indebtedness of Fall, Everhart and the Tres Ritos Cattle and Land Company (of which Company Fall and Everhart were the owners) to the said M. D. Thatcher Estate Company. The balance was turned over to Fall and Everhart. $106,000.00 of these bonds were identified, $100,000.00 as coming from the purchase from Walker Brothers and $6,000.00 from the purchase of Rhoades & Company by the Dominion Branch Bank Agency in New York for the Continental Trading Company, Ltd. The remainder of the bonds were not identified. There is no direct evidence as to how these bonds got into the possession of Secretary Fall's son-in-law and agent, Everhart. Mr. Everhart was placed upon the stand and refused to answer questions on the ground of self-incrimination. He refused to say whether he was in the eastern part of the United States in May, 1922, and stated as to the Liberty Bonds in his possession that he was interested as a principal therein. His claimed privilege was sustained by the Court.

Appellant in its attempts to show the facts as to the organization and business operations of the Continental Trading Company, Ltd., was confronted with obstacles most difficult, and in some instances impossible, to overcome. This Company was organized in Novem-

ber, 1921, under the laws of Canada, and is a somewhat unique and peculiar institution. Coupon share warrants, transferable by delivery, were issued, as was permissible under the Canadian law, instead of certificates of stock. It had no list of stockholders or stock warrant-holders, and nothing to show who the stockholders were. It is reasonable to conclude from the record that those chiefly interested in its formation and short existence were citizens of the United States who, for some reason, preferred Canadian corporation laws to those of their own country. The reason for the organization of the corporation under the laws of Canada is not disclosed. The President and counsel of this Company, Mr. Henry Smith Osler, a barrister of Toronto, Canada, who controlled and spoke for the other officers who are clerks in his office, refused to reveal anything of importance when the effort was made to take his evidence in Canada. He refused to divulge any facts that would materially assist the Government, on the plea that the acts done by him with reference to the organization and carrying on of the business of the Continental Trading Company, Ltd., were privileged as matters between attorney and client. He presented a carefully prepared statement as to what he thought he could properly testify to concerning the transaction. He testified he had a trifling interest in the Company; that "the officials being all members or employees of my firm and the Company being in effect merely a corporate clerk in my office. The business of the Company was conducted consistently with this position. No director, clerk, official or officer of the Company outside my office was ever appointed, and I remained in entire charge of the matter as effectively as if no company had ever been formed." A client, whose name Osler refused to disclose in his evidence, met him in New York in connection with the purchase of the thirty three million barrels of oil from the Humphreys interests, and its re-sale to the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company, at an advance of twenty-five cents per barrel. According to Osler's abortive testimony the unnamed client enjoined him not to disclose under any circumstances his identity. Osler claimed that he did not know who the stockholders of the Company of which he was President were. He was told by the gentleman who first talked with him about the Humphreys matter, whose name he would not give as it was given to him in confidence, that he had associates who were interested with him in the matter, but that

he must not disclose their names. According to him, "they then according to my understanding became my clients." No meetings of the shareholders of this phantom company were ever held for business purposes. The only meetings held were those required by law in connection with the organization and termination of the Company. Osler claimed that everything that was done by the Company, of which he admits in the statement he might have been, or acted as, President, and which was "in effect merely a corporate clerk in my office," was done under instructions from the unnamed client. Under the claim of privilege as to communications between client and attorney he refused to disclose whether Sinclair was present at any conferences, what dividends were declared by the Company, whether any Liberty Bonds were received by him as President and distributed to share holders as dividends or division of assets, whether he brought any such bonds to Toronto to make distribution, whether he paid his contribution to the capital stock of the Continental Trading Company, Ltd., in cash, whether he personally handled the final distribution of the assets of the Company, whether he distributed these assets to persons who then held stock or share warrants, whether he had at any time delivered any U. S. Liberty Bonds to Sinclair or anyone known by him to be acting for him. His claim of privilege was extended to cover the entire course of business of the Company.

A reading of this remarkable and evasive testimony impresses the fact that Osler was attempting, though President of this Company, to conceal the entire transactions leading to its organization and the carrying on of its business. It is an attempt to carry the doctrine of privileged communication beyond the bounds of reason or common sense and is trifling with the processes of the courts and making a travesty of a great fundamental principle of law. If a corporation can be organized, as this was, to transact certain business, and the President of the corporation can refuse to disclose the business operations thereof, and if the corporation can be protected because it is organized as a result of some confidential communication to the organizer by those who do the organizing, then a new and unheard of use of corporations has been established. The whole scheme of forming the Continental Trading Company, Ltd., and the carrying on of its business is open to grave suspicion, added to by the method in which it was officered, the evasive testimony of its

President, and his claim of privilege as to matters clearly without the scope thereof. If its object was to preserve secrecy as to the Humphreys transaction, to assist in the scheme of those concerned therein to make a profit at the expense of their stockholders and bury all trace thereof, or if it bore relationship in any way to matters involved in the acquisition of the lease in suit and the same secrecy was desired, certainly a wise choice was exercised in the selection of Osler, whose right hand under his control as President, was not permitted to know what his left hand under his control as counsel, was doing.

The highest court of Canada has held that Osler is compelled to answer many of the questions propounded to him by counsel for the United States. The decision was rendered during the trial of this case in the District Court. The Government sought to have the case re-opened after the decision of the trial Court, and before judgment, in order to obtain this evidence. Its motion directed to this was denied. In our judgment it should have been granted.

An attempt was made by the United States to take the deposition on letters rogatory of Henry (or Harry) Blackmer, his temporary address at that time being Paris, although his home was in Denver, Colorado. He did not know, as testified to by him, when he expected to return to the United States, and refused to answer whether he had any official connection with the Midwest Refining Company, and stated that as he had "done nothing contrary to law, honor or morality, directly or indirectly," he refused to reply to the questions put to him. He would not answer as to his knowledge concerning the Continental Trading Company, Ltd.; whether he had been connected with that Company; whether he knew Osler; whether he ever had any stock warrants representing the stock of the Continental Trading Company, Ltd.; whether he was acquainted with Sinclair; whether he was present at the meeting at Hotel Vanderbilt during the time of negotiations as to the Humphreys contract; whether he had ever received any United States Liberty 3½% Bonds as dividends or profits arising from the Continental Trading Company, Ltd.; whether Harry F. Sinclair to his knowledge had any interest as officer, director or owner of stock warrants of the Continental Trading Company, Ltd., of Canada during the year 1922; whether he knew anything as to the transaction between that

Company and the Humphreys Mexia Company and the Humphreys Texas Company.

James E. O'Neil, who the testimony shows was present as a representative of the Prairie Oil & Gas Company at the time of the negotiations and the execution of the contracts of November 17, 1921, and whose address was Garden City, New York, also seems to have been temporarily residing in France at the Villa St. Antonio, Cannes, immediately prior to the time of the trial when the Government desired to secure his evidence. He did not know when he expected to return to the United States. He also affirmed that he had done no illegal act or anything contrary to morals relative to this affair; that his health was not good and that he preferred to remain away from the proceedings in suit, and refused to answer interrogatories propounded in the attempt to secure his evidence. The same amount of information was obtained from him as from Blackmer.

The Trial Court in speaking of Blackmer's refusal to testify says:

"Being an officer of the Midwest Refining Company, he may not have desired to testify in regard to the details of the transaction, for the reason that it might be thought by his company that he should be held accountable for the profits derived in his brokerage transactions, or he may have been desirous of avoiding income taxes, or his refusal may have been based upon the ground that, as there was no connection between his transaction and the Mammoth lease, it was not the concern of other people in their investigation of an entirely different and disconnected transaction. In the realm of speculation, we may allow our imaginations to roam at will. Stuart and O'Neil did not testify, although it appears that Stuart might have been available."

That gentlemen, who had occupied such responsible positions in great oil companies as Mr. Blackmer and Mr. O'Neil had, should leave their country and refuse to answer questions put to them by counsel for their own Government in the attempt to elicit information which might bear even somewhat remotely on the charge that a Cabinet officer had accepted a bribe, naturally challenges attention. We think it cannot be said that the transactions inquired about could have had no possible connection with the subsequently

executed lease to the Mammoth Oil Company then undoubtedly under consideration and negotiation. At least the Government contended it did have, and there is some basis in the evidence for such contention. The entire transaction of the purchase of the Humphreys oils by the Continental Trading Company, Ltd., and the resale to the Prairie Oil & Gas Company and the Sinclair Crude Oil Purchasing Company bears the earmarks, either of a swindle of the stockholders of these Companies, which of course is not a question before us, or a scheme to create a fund to be used in the way the Government claims the profits of the Continental Trading Company, Ltd., were in part used, viz., for a sinister and unlawful purpose, or both. The record throws little light on the purposes of this most peculiar transaction, and the parties who could explain the same seem to be either conveniently absent from the country or strangely and eloquently silent. Mr. Stewart, who was present at the Humphreys negotiations, it was stated by counsel for the Government in the trial of the case, was under subpoena, but the same counsel stated in his oral argument in this Court that his statement to the trial Court was a mistake. Counsel for the United States in their brief say: "A subpoena was issued for Mr. Stewart but the marshal was never successful in serving him. During the trial he was in Mexico and South America." The residential status of Mr. Stewart is a matter of some doubt under statements of counsel here and in the trial.

The trial Court in its opinion refers to some of the circumstances in the case as suspicious, but finds there are missing links in the testimony, which are supposedly the connection of Sinclair with the Continental Trading Company, Ltd., and with the acquisition of Liberty Bonds by Everhart, used for his and Secretary Fall's credit. There is not sufficient direct evidence in this record to show these matters. The really determinative question therefore as to this branch of the case is: Are the reasonable inferences and presumptions legitimately and properly to be drawn from all the facts and circumstances disclosed in the evidence sufficient to supply the so-called missing link?

In this connection we revert to some matters previously discussed. As before pointed out, Sinclair received through Secretary Fall's efforts and unfair manipulations a lease of great value. That there existed a somewhat intimate relationship between Secretary Fall and Sinclair is apparent. Sinclair visited Fall at his ranch in New Mexico and talked over the matter of the leasing of Teapot Dome. Sinclair's personal attorney drew the lease. Sinclair, at Secretary Fall's suggestion, after the lease was executed, arranged for a prominent newspaper publisher, Mr. Shaffer, to have some four hundred acres of the Teapot Dome lands.

On May 26, 1923, Fall, then shortly out of the office of Secretary of the Interior, was presumably employed by Sinclair to make a trip to Europe for Sinclair for the claimed purpose of acting as counsel for Sinclair as to any international questions that might arise in his attempt to secure leases in Russia. Secretary Fall suggested to Zevely, who appears to have been managing the matter, that he desired the approval of the Administration as to this enterprise. It is not disclosed that the same was ever sought. Assuredly it was not forthcoming. Fall informed Zevely that he needed $25,000.00 with which to buy some ranches. Zevely conveyed the information to Sinclair that Fall might want that amount and Sinclair said, "If he does you will have to let him have it." Why he would have to let him have it is not explained. After Sinclair had sailed for Europe, having directed his secretary, Wahlberg, to turn over to Zevely $25,000.00 in bonds, if Zevely asked for it, Zevely requested bonds and Wahlberg turned over to him $25,000.00 face value three and one-half per cent United States Liberty Bonds, which he in turn gave to Fall. There is no identification of these bonds as being bonds ever owned by the Continental Trading Company, Ltd., although they are three and one-half per cent Liberty Bonds, and in that respect bear similarity to the bonds received by Everhart about a year before these were taken from Sinclair's box. They were forwarded by Fall to the First National Bank of El Paso with directions to sell and credit to his account. Fall also received $10,000.00 for expense money. The testimony shows that Fall did not buy the ranches, for which purpose he had supposedly received the $25,000.00. Zevely testifies that these bonds were a loan from Sinclair to Fall, and not a fee, and that after his return from Europe Fall gave him his note for the amount. There is no testimony to show

that any interest or principal was ever paid thereon. The proceeds of the sale of these Liberty Bonds were credited to Fall's account. Zevely's explanation of this affair is weak, wholly unsatisfactory, and evidently borne of the exigencies of the situation.

Barring discussion of the impropriety of a Cabinet officer who had turned over leasehold interests of immeasurable value accepting employment from the beneficiary thereof within a few months after his retirement from office, the transaction tends to show that the dealing in bonds between Sinclair and Secretary Fall was not a novel affair, unusual as it might be in the business world, and reveals an intimate relationship between Secretary Fall and Sinclair. A contract made by a public official with a corporation or firm from which he accepts employment immediately upon retiring from office, should be closely scrutinized by the courts. It relates back and tends to taint the contract, perhaps not in itself sufficiently to invalidate it, but is to be considered as a weighty circumstance bearing on the good faith of the matter. This transaction as to the $25,000.00 of Liberty Bonds passing from Sinclair to Secretary Fall, although occurring after Fall had retired from office, blends into past events and becomes in fact an important feature in this case.

The trial Court was of the opinion that the testimony of Humphreys and Senator Thomas disclosed that "Osler and the Continental Trading Company, Ltd., were the creatures of Blackmer;" that Blackmer was the unnamed client of Osler, and that therefore there was no connection between Sinclair and Fall in the transaction as to the bonds appearing in the hands of Everhart except by suspicion or guess. Appellees argue that the evidence shows Sinclair was not the client of Osler and had no connection with the Continental Trading Company, Ltd. While it is true that Blackmer carried on the preliminary and final negotiations for the purchase of the Humphreys oils the testimony of Thomas and of Humphreys shows that Blackmer was acting for other gentlemen as well as for himself. Under the contract entered into between the Continental Trading Company, Ltd., and the Humphreys Companies, the Continental Trading Company, Ltd., was quite sure to make a profit of approximately $8,000,000.00 if it kept the contract. This was surely not all for Blackmer. The other gentlemen sitting around the New York luncheon table, with the exception of Humphreys and Senator Thomas, were also engaged in this piece

of high finance. Senator Thomas testifies, as before pointed out, that "these gentlemen or some of them had agreed to buy." Osler speaks in his testimony of the associates of Blackmer. On account of Blackmer's sojourn abroad the Court is not permitted to know his version of the matter, but it is clear from such evidence as the Court is permitted to have on this question that Blackmer was not acting for himself alone, but for others, and that the others were the gentlemen meeting at New York at the time the various contracts were made, one of whom was Sinclair. He was present with the other gentlemen when the Humphreys matters were discussed, and when the negotiations were concluded and contracts signed. Is it reasonable to suppose that the guaranty of the Humphreys contract made by Sinclair and Stewart acting for the Sinclair Crude Oil Purchasing Company would be made unless Sinclair had something to say as to the affairs of the Continental Trading Company, Ltd.? Would he participate in an arrangement by which the stockholders of the Company he represented would be mulcted to the extent of twenty-five cents per barrel of oil, unless he were participating in the profits thereof? Surely here is something laid at the door of Sinclair requiring explanation. It is no answer to say it relates to a matter not in this case. The Continental Trading Company, Ltd., and its affairs occupy an important position in this case, not eliminated by the evasiveness of its President. Is it reasonable to suppose that the sale to the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company by the Continental Trading Company, Ltd., of the Humphreys contract, in which there remained a profit of approximately $6,000,000.00, for $400,000.00, would have been made unless the Sinclair Crude Oil Purchasing Company or its officers were connected with and influential with said Continental Trading Company, Ltd.? It is apparent, we think, that this Continental Trading Company, Ltd., was merely the agency of some of the gentlemen who sat around the luncheon table in New York negotiating for the purchase of the Humphreys oil, and was to do as a corporation what these gentlemen were evidently not willing to undertake as principals. It was nothing more than a dummy corporation, and courts will look through the shell of such an institution to see what it really is.

The silence and evasions in this suit suggest many pertinent inquiries. Why should Osler refuse to disclose the connection, if

any, of Sinclair with this Company? Why is silence the answer of a former Cabinet official to the charge of corruption? Why is silence the only reply of Sinclair, a man of large business affairs, to the charge of bribing an official of his Government? Why is the plea of self-incrimination,—one not resorted to by honest men, —the refuge of Fall's son-in-law, Everhart? It would seem that men of standing in the business world when accused of being bribers would be quick to resent the charge and eager to furnish all information possible that might remove such stain upon their reputations. It is incredible that a former Cabinet official in the position of trustee of the public lands for the people of the United States, when accused of bribery and corruption in connection with his official duty in matters where great public interests are concerned, would not be quick to refute the same. Men with honest motives and purposes do not remain silent when their honor is assailed. It is amazing that officers of great oil companies, such as Blackmer and O'Neil, would flee their country and refuse to testify in a suit brought by their own Government to unearth an alleged fraud practiced on it by a high official. While Secretary Fall is not technically a party to this suit, he was the agent for the Government in the transactions provocative of this case, and his former principal is a party. Sinclair is in fact a party because the Mammoth Oil Company is his creation and agent. Its acts are his acts.

Is a court compelled to close its eyes to these circumstances? Is it to assist by nice technicalities and legal blindness a transaction such as the Government charges took place, and such breach of trust as the evidence in this case points unerringly to if not to absolute criminality? These gentlemen have the right to remain silent, to evade, to refuse to furnish information, and thus to defy the Government to prove its case, but a court of equity has the right to draw reasonable and proper inferences from all the circumstances in the case, and especially from the silence of Secretary Fall, and from the failure of Sinclair to testify. It is not sufficient answer that the Government might have used Sinclair as a witness. He was properly a witness for the defense. If he could not fully have explained the organization of the Continental Trading Company, Ltd., he could at least have placed beyond the realm of dispute the question of whether he was connected therewith, and whether he

received any Government bonds as dividends therefrom, or shared in any distribution of its assets.

The trial Court said:

"The entire transaction, in so far as it was participated in by Sinclair, was fully revealed by other witnesses, and presumably, if we are to presume anything on account of the failure of Sinclair to testify, if he elected to so testify, his testimony would have been to the effect that he knew nothing further in regard to the Continental Trading Company transaction than was disclosed by the other witnesses in the case. A different situation might have been presented, had Blackmer been in the place of Sinclair, if we are to consider as admissible the evidence in regard to bonds purchased by the Continental Trading Company and subsequently finding their way into the possession of Fall's relative. For aught we know, there may have been independent business relationships, legitimate or otherwise, between Blackmer and Fall, as neither is made a party to this suit."

We do not reach the same conclusion under the record. We fail to perceive why under all the circumstances revealed in this case it should be presumed that Sinclair knew nothing more than the other witnesses who testified as to the organization and business of the Continental Trading Company, Ltd. Two of the witnesses familiar therewith were in France. The President of the Company refused to disclose any facts of importance as to its business. Whether Stewart was available is a matter of doubt. With important and controlling facts in Sinclair's possession, and with a train of circumstances that aroused the gravest suspicion as to corruption practiced in securing the lease laid at his door, his failure to testify is a matter of deep significance. There is a presumption in the law that if a litigant have facts within his knowledge and refuses to reveal them, it is presumed that if revealed they would be against him. The silence of one who should speak may well create an inference adverse to him.

In *Gulf C. & S. F. Ry Co* v. *Ellis*, 54 Fed. 481, 483, this Court said:

"The facts in the matter in dispute rested peculiarly within the knowledge of the defendant, and it had in its power to show by its

engineer what they were, and declined to do so. Now, it is a well settled rule of evidence that when the circumstances in proof tend to fix a liability on a party who had it in his power to offer evidence of all the facts as they existed, and rebut the inferences which the circumstances in proof tend to establish, and he fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting would support, the inferences against him, and the jury is justified in acting upon that conclusion."

In *Kirby* v. *Tallmadge*, 160 U. S. 379, the Court referring to the failure of the defendants to introduce any witnesses said:

"As they had it in their power to explain the suspicious circumstances connected with the transaction, we regard their failure to do so as a proper subject of comment. * * * It would certainly have been much more satisfactory if the defendants, who must have been acquainted with all the facts and circumstances attending this somewhat singular transaction, had gone upon the stand and given their version of the facts."

In *Starkie on Evidence*, Vol. 1, page 54, it is said:

"The conduct of the party, in omitting to produce that evidence in elucidation of the subject-matter in dispute, which is within his power, and which rests peculiarly within his own knowledge, frequently affords occasion for presumptions against him, since it raises strong suspicion that such evidence, if adduced, would operate to his prejudice."

See also *Bilokumsky* v. *Todd*, 263 U. S. 149; *Choctaw & M. R. Co.* v. *Newton*, 140 Fed. 225; *Hill* v. *United States*, 234 Fed. 39; *Attorney General* v. *Pelletier*, 240 Mass. 264.

The statement of Lord Mansfield in *Blatch* v. *Archer*, Cowp. 63, 65, is apropos: "It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other side to have contradicted."

Of course, a plaintiff in a case cannot insist that defendant must furnish evidence he may have or permit plaintiff to succeed, and there must be affirmative proof of facts prima facie at least to sustain plaintiff's contentions before inferences can be properly drawn.

The language used by some courts is that there must be something laid at defendant's door. As before indicated, we are of the opinion that that situation existed here.

None other beside Sinclair in the company of men sitting around the table and arranging the Humphreys deal had any connection with Secretary Fall, either at that time or in the future, so far as the record shows. While this was prior to the signing of the lease, it is reasonably certain that negotiations were then either being carried on with reference thereto, or were in immediate prospect. From all the circumstances, especially in view of his failure to testify and explain the formation of this corporation or to deny his connection therewith, the reasonable inference is that Sinclair was one of the principals and shared in the profits of this transaction.

We then have a situation where an agency of Sinclair and others, The Continental Trading Company, Ltd., had as a part of its assets some of the very Liberty Bonds which soon after their acquisition by said agency appeared in the hands of Fall's son-in-law, and were deposited to Fall's credit in banks and used to liquidate his debts. There is no direct evidence to show how the bonds of the Continental Trading Company, Ltd., came into Everhart's possession. Everhart took refuge in a plea of self-incrimination. Osler refused to explain under plea of privilege as an attorney. Sinclair remained silent; likewise Fall. If Blackmer and O'Neil know anything about it their evidence cannot be procured until their sojourn in a foreign country is ended. This Company during its short life had purchased a large amount of Liberty Bonds, and out of its profits in the Humphreys matter before the bonds appeared in Everhart's hands it had purchased at least $300,000.00 of such bonds. At the time the Company surrendered its charter in 1923, Osler reported to the proper officer that the assets had been divided ratably among those entitled thereto.

What became of these bonds? The Government claims they were distributed by Osler, as dividends or as assets, to the holders of coupon share warrants of the Continental Trading Company, Ltd. It would be quite natural that a company with so little expense, its officers being mere clerks in Osler's office, and making so much money out of the purchase and re-sale of the Humphreys oils, and making it so easily, would distribute dividends to its share holders.

While Osler refused to answer what he did with Liberty Bonds received by him as President of the Company, refused to testify in what commodity the dividends were paid, and whether he distributed to warrant holders on or about May 8, 1922, certain Liberty Bonds, he did say: "As I say, speaking from recollection, I would say I didn't get any bonds to deal with for eight or ten months, but I am wrong about that apparently. I have no recollection what I may have done with them. My recollection is quite blank at that time altogether. I cannot give you any other thing I would have done with them except distribute them to the stockholders. You are asking me to guess. My memory is not refreshed on the subject."

In view of this testimony, evasive and non-committal as it is, taken in connection with the statement in Osler's letter of August 9, 1923, to the Under Secretary of State at Ottawa, Ontario, that the Continental Trading Company, Ltd., had "divided its assets ratably amongst its shareholders," it is fair to assume that the warrant shareholders received dividends and assets in the form of Government bonds, as the bonds purchased constituted the only assets of the Company shown by the record. More than $200,000.00 of these assets in the form of Liberty Bonds had either been sold by May, 1922, and purchased by Everhart, or had reached him in other ways. If he had purchased them on the market there would be no reason for him to claim that testimony so showing would incriminate him, nor would there have been reason for Osler to evade testimony on this question. It is a reasonable and proper inference under these circumstances that Everhart did not receive the bonds through purchase.

While no isolated fact, circumstance or presumption in the case and no particular inference may be sufficient to establish Sinclair's connection with the receipt of bonds by Fall or Everhart, yet taking the entire record of what was done, and all the inferences properly to be drawn therefrom, the fact is sufficiently established that the bonds in the possession of Everhart and used in part for Secretary Fall's benefit were received by Everhart either from Sinclair or the Continental Trading Company, Ltd. That Company, we have pointed out, is shown to have been the agent of Sinclair, Blackmer, O'Neil and Stewart. Its assets consisted principally of Liberty Bonds. These assets were delivered to the shareholders,

as Osler's letter shows. If by direct evidence it appeared that Sinclair was the owner of certain Liberty Bonds which afterwards appeared in Secretary Fall's hands, in view of all the circumstances of this case, a court could not escape the conclusion that Sinclair had transferred them to Fall. The only difference here is that the bonds were the property of an agency in which Sinclair was interested, and in some manner reached Everhart and Secretary Fall. Is a court to say that because none testified as to the actual transfer of the bonds that a fatal missing link in the evidence exists. We conclude not. The reasonable, proper and natural inferences and presumptions from the accrual of condemnatory incidents appearing in this record supply the so-called missing links in the testimony and satisfy us of Sinclair's connection with the Continental Trading Company, Ltd., and with the acquisition of the Government Liberty Bonds by Everhart and Secretary Fall. A trail of deceit, falsehood, subterfuge, bad faith and corruption, at times indistinct, but nevertheless discernable, runs through the transactions incident to and surrounding the making of this lease. It should not receive the approval of the Courts. Our conclusion is that the Government has sustained its claim that the lease and contract were procured by fraud and corruption, and that they should be cancelled. This conclusion is based on the theory that a part of the evidence, at least as to the purchase of the bonds and the identification of those coming into the hands of Everhart, was competent. This question next demands our attention.

IV.

Action of the Trial Judge in Sustaining Motion to Strike Certain Testimony.

Appellees at the conclusion of the testimony moved to strike from the record the items of deposit, deposit tickets, checks, book entries, ledger entries and other records and papers of the Exchange Bank of Carrizozo, New Mexico, the First National Bank of El Paso, Texas, the Federal Reserve Bank of Kansas City, The Central Union Trust Company of New York, the M. D. Thatcher Estate Company, the Dominion Bank of Canada, New York Agency, Salomon Brothers and Hutzler, Walker Brothers, Rhoades and Company and the First National Bank of Pueblo, Colorado.

The motion was based on two grounds, viz.,

(1) That some of the evidence was hearsay, the parties who purported to testify having no personal knowledge of the books and records themselves.

(2) That the evidence fell within the rule of "res inter alios acta."

The Court held that the first ground urged affected only a small portion of the evidence and refused to sustain the motion on that ground. As to many of the transactions the persons who actually conducted the same, testified as to the entries. Others refreshed their recollection and testified from memory as to some of the original transactions. Practically all the records sought to be introduced were original records, and were identified by persons having custody thereof, and under whose supervision they had been made. The entries therein were regularly made in connection with the due course of daily business of the companies. In some instances it was impossible to secure the attendance of the particular person making some particular entry, he being no longer in the employ of the firms or corporations. While there may be some hearsay, as the Court found, it affects only a small portion of the evidence, if at all. A large part at least of the evidence of records and exhibits was admissible. *Billingsley* v. *United States*, 274 Fed. 80; *Templar Motor Co.* v. *Bay State Pump Co.*, 280 Fed. 24; *Kobzio* v. *United States*, 291 Fed. 677; *Walker* v. *United States*, 291 Fed. 988; *Grunberg* v. *United States*, 115 Fed. 81; *Keyburn* v. *Queen City Savings Bank & Trust Co.*, 171 Fed. 609; *The Spica*, 280 Fed. 430; *E. I. Du Pont Co.* v. *Tomlinson*, 285 Fed. 634; *Wisconsin Steel Co.* v. *Maryland Steel Co.*, 203 Fed. 403; *Mississippi River Logging Co.* v. *Kobza*, 99 Fed. 773; *Farmers Nat. Bank* v. *Pratt*, (Iowa) 180 N. W. 924; *Roberts* v. *Ossit*, (Iowa) 162 N. W. 584; *Shirley* v. *S. Ky. Co.*, (Ala.) 73 Southern 430; *People* v. *McCann*, (Ill.) 93 N. E. 100; *Wigmore on Evidence*, Vol. 2, Sec. 1530; *Hughes on Evidence*, p. 177, Sec. 3.

If enough of such evidence was competent, as we conclude it was, to establish that some of the Liberty Bonds purchased by the Continental Trading Company, Ltd., found their way into Fall's or his son-in-law's possession, it would be of little consequence in the final determination of the case whether or not any other of such bonds

were likewise traced. This Court in *Union Pacific R. Co.* v. *Perrine*, 267 Fed. 657, and in *Crowell Bros.* v. *Panhandle Grain and Elevator Co.*, 271 Fed. 129, strongly condemns hearsay testimony. Our holding here is no relaxation of the rules there announced. The records there clearly show the challenged evidence was hearsay. Such situation is not presented here as to most of the evidence objected to. As to a small part thereof the preliminary proof may not have been sufficient.

The Court based its action in sustaining the motion to strike on the ground that the rule *"res inter alios acta"* applied to and governed the situation. The ruling would seem to be entirely unimportant, for the reason that if this evidence, conceding it to be admissible in connection with the other evidence in the case, was insufficient to sustain the charge of fraud, then the question of whether it was properly admitted, was of no consequence. If, however, the transactions as to the purchase of the Government Liberty Bonds was a part of or resulted from a conspiracy between Fall and Sinclair to corruptly bring about the execution of the lease they were not matters between strangers and the evidence relating thereto would not be subject to the rule of *"res inter alios acta."*

Appellee, Mammoth Oil Company, being the creature of Sinclair, its acts being his acts, it could not well be claimed that the purchase or deposit of the Government Liberty Bonds bore no relationship to the parties to this case if the whole matter was part of or the result of a conspiracy by which Secretary Fall or his agent received from the agent of Sinclair the Liberty Bonds for negotiating the very lease and contract which this suit was brought to cancel. *New York Mutual Life Ins. Co.* v. *Armstrong*, 117 U. S. 591; *Olson* v. *United States*, 133 Fed. 849; *Knudsen* v. *Domestic Utilities Mfg. Co.*, 264 Fed. 470. The bond transactions were evidence bearing on the question of improper motives on the part of Secretary Fall in negotiating the lease and contract.

The facts considered by this Court in *Board of Commissioners* v. *Keene Five Cents Sav. Bank*, 108 Fed. 505, in which reference is made to the rule of *"res inter alios acta"* are so different that the observations there would not be applicable to the situation here presented, likewise as to *Union Pac. R. Co.* v. *Perrine*, 267 Fed. 657 and *Crowell Bros.* v. *Panhandle Grain Co.*, 271 Fed. 129.

It must also be borne in mind that great latitude is allowed in the introduction of evidence on an issue of fraud. 20 Cyc. 110; *Knudsen* v. *Domestic Utilities Mfg. Co.*, 264 Fed. 420; *Butler* v. *Watkins*, 13 Wall. 456.

Error is assigned as to the action of the Court in sustaining the refusal of witness Everhart to answer questions propounded by the Government on the ground that his answers might incriminate him. Everhart had in his possession certain Liberty Bonds and claimed that he had them in his own right as a principal. The entire circumstances of this case are such as to arouse very grave suspicion that Everhart was attempting merely to shield others. The necessity of discussion of this question is obviated by our conclusion as to the question of fraud.

V.

Appellees, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, claim certain rights which are derived from appellee, Mammoth Oil Company. The Sinclair Pipe Line Company was granted an easement for pipe lines, buildings and structures necessary to operate the same. It has spent large sums in constructing the same. It has also invested large sums in constructing a pipe line system, relying on the easement or right of way granted across said naval reserve. Its stock is owned by the Sinclair Consolidated Oil Corporation and the Standard Oil Company of Indiana in equal proportions. Mr. Sinclair is or was Chairman of the Board of Directors of Sinclair Consolidated Oil Corporation and probably its largest stockholder.

Appellee, Sinclair Crude Oil Purchasing Company, evidently controlled by Mr. Sinclair, purchased from the Mammoth Oil Company seventeen steel oil storage tanks on Naval Reserve No. 3, and became substituted as to the rights of the Mammoth Oil Company to maintain the same. This was before an attempt was made or any action taken, to rescind the said contract of April 7, 1922.

Are these two appellees trespassers upon said naval reserve?

It is urged that in case of cancellation of the lease and contract appellant be required to do equity in the consequent accounting. The rights of the Sinclair Crude Oil Purchasing Company and the Sinclair Pipe Line Company are based upon the lease of the Mam-

moth Oil Company. Credit in the accounting or otherwise for moneys expended by these appellees could only be allowed if they were innocent trespassers and expended the money and made the improvements in good faith.

As our conclusion is that the lease and contract were procured through fraud and corruption, each of the appellees is a mala fide trespasser on the Government lands, and therefore no credit for expenditures can be allowed any of them by the Court, and a full accounting of the value of the oil extracted must be rendered. *Causey* v *United States*, 240 U. S. 399; *United States* v *Trinidad Coal and Coking Co.*, 137 U. S. 160; *Pan-American Petroleum Co et al* v *United States*, 9 Fed. (2d) 761, 773. If appellees or any of them are entitled, upon a cancellation of the lease and contract, on the ground that they were fraudulently obtained from the United States, to credit for moneys expended in carrying out said contract, such relief must come from the Congress.

The decree and judgment of the trial Court dismissing the bill of the United States is reversed and the case is remanded with instructions to the trial Court to enter a decree (a) cancelling said lease and contract as fraudulent, (b) enjoining appellees from further trespassing upon the lands of appellant described in said lease, and (c) providing for an accounting on the part of appellee, Mammoth Oil Company, for the value of all oil and other petroleum products taken under said lease and contract.

Reversed and Remanded

853 (Decree.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1926.

Tuesday, October 12, 1926.

United States of America, Appellant,
No. 7188. vs.
Mammoth Oil Company, a corporation of the State of Delaware, Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware, and Sinclair Pipe Line Company, a corporation of the State of Maine.

Appeal from the District Court of the United States for the District of Wyoming.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Wyoming, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause be, and the same is hereby, reversed without costs to either party in this Court.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with instructions to enter a decree (a) cancelling the lease of date April 7, 1922, made by the United States with the Mammoth Oil Company and the contract supplemental to said lease signed February 9, 1923, as fraudulent, (b) enjoining the appellees from further trespassing upon the lands of appellant described in said lease, and (c) providing for an accounting on the part of the appellee, Mammoth Oil Company, for the value of all oil and other petroleum products taken under said lease and contract.

October 12, 1926.

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854 (Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Wyoming

as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein the United States of America was Appellant and the Mammoth Oil Company, et al., were Appellees, No. 7188, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 25th day of October, A. D. 1926.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 3, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanies the petition shall be treated as though filed in response to such writ.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 719

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY and SINCLAIR PIPE LINE COMPANY,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR CERTIORARI
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BRIEF ACCOMPANYING PETITION
Page 27 to Page 75.

JOHN W. LACEY,
MARTIN W. LITTLETON,
GEORGE P. HOOVER,
PAUL D. CRAVATH,
C. T. STANFORD,
HERBERT V. LACEY,
J. W. BEVILL,
E. W. HAGLAND,
DOUGLAS H. MOFFAT,
Solicitors for Mammoth Oil Company.

EDWARD E. CHAMBERS,
RALPH W. ARNOLD,
Solicitors for Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No.

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY and SINCLAIR PIPE LINE COMPANY,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

The joint and several petition of MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY and SINCLAIR PIPE LINE COMPANY for a Writ of Certiorari to review the decree and judgment of the United States Circuit Court of Appeals for the Eighth Circuit, entered in the above entitled cause on October 12, 1926 (R. p. 852), reversing the decree and judgment of the District Court of the United States for the District of Wyoming (R. pp. 271-276).

Statement of the Case.

This is a suit in equity begun in the United States District Court for the District of Wyoming on March 13, 1924, against your petitioners by the United States of America,

by and through special counsel appointed by the President of the United States under special congressional authority therefor. The object and prayer of the bill of complaint is to cancel two certain contracts as follows:

> (a) A contract, dated April 7, 1922, whereby the United States leased to your petitioner Mammoth Oil Company, Naval Petroleum Reserve No. 3, otherwise known as the Teapot Dome, reserving to the United States royalties in the form of stipulated percentages of the oil produced, and also making disposition of these royalties to the lessee, with certain options reserved to the United States as to equivalents to be by it received for the royalty oils (R. pp. 14-36).
>
> (b) A supplemental contract, dated February 9, 1923, by which the United States under the options reserved in the lease, exchanged with the lessee the royalty oils accruing under the lease for fuel oil and other oil products suitable for use by the United States Navy, together with the necessary storage facilities therefor (R. pp. 36-51).

The bill, briefly stated, complains (a) that the contract of April 7, 1922, and the supplemental agreement of February 9, 1923, were without authority of law and were not made in compliance with law (R. p. 6, par. 14 and p. 8, par. 41); (b) that the said contracts were obtained by fraud (R. p. 10, par. 28).

It is alleged in the bill that your petitioners, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, have acquired certain rights and interests from

your petitioner Mammoth Oil Company, under which they have erected certain structures on the lands and that they are without right and are trespassers upon the lands (R. p. 11, par. 32-33).

Your petitioner Mammoth Oil Company answered, denying all allegations upon which cancellation was claimed (R. pp. 55-69). Your petitioners Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company denied knowledge of any of the matters alleged for cancellation and upon such lack of knowledge put in issue the said matters. In its answer the Pipe Line Company further alleged an assignment by Mammoth Oil Company of rights and privileges on Government land contained in the lease and that the United States consented to the assignment, and that relying thereon it placed its lines and structures on the leased land at a cost of more than $700,000. In its answer the Sinclair Crude Oil Purchasing Company further alleged the purchase by it from Mammoth of certain storage tanks on the land, relying on the validity of the lease and without knowledge of any alleged fraud (R. pp. 69-84).

For brevity and convenience, we will herein refer to the United States District Court for the District of Wyoming as the District Court and to the United States Circuit Court of Appeals for the Eighth Circuit as the Court of Appeals.

The case was tried in the District Court, resulting in findings for your petitioners on all issues and a decree dismissing the bill (Opinion, R. pp. 225-271; Findings and Decree, R. pp. 271-276).

An appeal from the District Court was taken by the United States to the Court of Appeals and that court, as

we understand its opinion (R. pp. 811, 816), confirmed the findings of the District Court to the effect that neither of the contracts was without authority of law and that neither of them was made without compliance with law, but reversed the findings of the District Court on the question of fraud and found that the contracts were fraudulently obtained, and remanded the case, with instructions to the District Court "to enter a decree (a) cancelling said lease and contract as fraudulent, (b) enjoining appellees from further trespassing upon the lands of appellant described in said lease, and (c) providing for an accounting on the part of appellee, Mammoth Oil Company, for the value of all oil and other petroleum products taken under said lease and contract" (R. p. 851).

For some years prior to February 25, 1920, the United States had no policy as to the disposition of its oil lands, the known oil lands having been withdrawn in 1909 and 1910 from entry and appropriation under the general mining laws, in aid of further legislation whereby a better disposition of them could be made than was found in said laws (*U. S.* v. *Midwest Oil Co.*, 236 U. S. 459, 485). On February 25, 1920, after the above pause, Congress enacted the General Leasing Law (41 Stat. L. 437) authorizing the leasing of public oil lands and vesting the administration of the law in the Secretary of the Interior. This general law excluded the naval petroleum reserves except that it contained in section 18 provisions authorizing the Secretary of the Interior under certain conditions, to lease producing wells on the reserves and perhaps additional areas.

Shortly after the Act of February 25, 1920, and at the same session, Congress passed the Act of June 4, 1920,

dealing specially with the naval petroleum reserves, in the words following:

> "Provided That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled 'An Act to provide for the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain,' or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States; And provided further, That the rights of any claimant under said Act of February 25, 1920, are not affected adversely thereby: And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922; Provided further, That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct" (41 Stat. L. 813).

Inasmuch as the Secretary of the Navy was without the personnel skilled and experienced in dealing with oil lands,

and such personnel existed in the Interior Department (R. p. 430), the President of the United States on May 31, 1921, issued an order called in the bill of complaint the Executive Order, concluding as follows:

> "The Secretary of the Interior is authorized and directed to perform any and all acts necessary for the protection, conservation and administration of the said reserves, *subject to* the conditions and limitations contained in this order and *the existing laws* or such laws as may hereafter be enacted by Congress pertaining thereto" (Italics supplied.) (R. pp. 13-14.)

Under this order the personnel in the Interior Department and the Secretary of the Interior himself were coordinated with and aided the Navy Department and the Secretary of the Navy in the matter of negotiating the contracts in suit.

The bill of complaint charges that the Executive Order was invalid, illegal and of no force or virtue in law and that the same was procured by Secretary Fall and Harry F. Sinclair by fraud and misrepresentation (R. pp. 5-6, pars. 9-12). These grave allegations with reference to the invalidity and the procurement by fraud of the Executive Order, impeaching a Cabinet officer and reflecting upon the President himself, were denied by the answers (R. pp. 57-58, pars. 9-12).

Both courts, as we understand the decisions, found that the Secretary of the Navy exercised such authority and control in the negotiation and execution of the contracts as to fulfill the requirements of the Act of June 4, 1920.

The terms of the lease made by the Secretary of the Navy were unquestionably favorable to the Government

and onerous to the lessee. This appears by (a) affirmative evidence from witnesses called by the United States (R. p. 347, l. 20; p. 403, l. 15; p. 712, l. 14); (b) the fact that no evidence was offered by the United States against the terms of the lease; (c) the fact that neither the District Court nor the Court of Appeals found that the terms of the lease were unfavorable to the Government.

The District Court, in discussing the lease, said:

> "There is the significant lack of material damage to the Government which usually attends allegations of fraud, for in the case at bar no attempt has been made to show that the lease in controversy was in itself a bad lease for the government, except perhaps theoretically by counsel, but on the other hand the testimony of the plaintiff's own witnesses who are competent to speak upon the subject, tends to show that it is a lease much more favorable to the Government than they as oil operators would be willing to assume. These elements are perhaps not controlling in a case of this character, but they are at least worthy of mention as being conspicuous because their presence is usually the basis of relief sought in cases of this kind" (R. p. 248).

The Court of Appeals, speaking through Judge Kenyon, on the same subject said:

> "If a Government official, engaged in making contracts for the Government, receives pecuniary favor from one with whom such contracts are made, a fraud is committed on the Government, and *it matters not that the Government is subjected to no pecuniary loss or that the contract might have been an advantageous one to it*" (Italics ours). (R. p. 817.)

Reasons for Granting the Writ.

The reasons why the writ should issue are:

1. In arriving at the conclusion that fraud had been established, the Court of Appeals, in a way untenable and in conflict with the weight of authority, decided important questions of law relating to the matter of drawing inferences.

2. The Court of Appeals, in a way untenable and in conflict with the weight of authority, held that certain records and other documents were competent evidence.

3. The Court of Appeals erred in construing the words "directed * * * to conserve, develop, use and operate" contained in the Act of June 4, 1920, to be permissive rather than mandatory. The matter of such construction constitutes an important question of federal law which has not been, but should be, settled by this Court.

4. The Court of Appeals decided an important question of general law in a way untenable and in conflict with the weight of authority, in denying the right of Mammoth Oil Company to receive credit for the value of things received by the United States under the contracts.

5. The decree is inequitable as to Sinclair Pipe Line Company and Sinclair Crude Oil Purchasing Company.

6. The case is of great public importance.

1.

Unlawful Inferences.

The Question of Fraud.

As to the fraudulent procurement of the contracts, the Court of Appeals stated the point as follows:

> "It is the theory of the Government, bluntly stated, that Secretary Fall received from Harry F. Sinclair, sole owner of appellee, Mammoth Oil Company, a pecuniary consideration which influenced him in granting to said Oil Company a lease of Naval Petroleum Reserve No. 3, commonly known as "Teapot Dome." Counsel for the United States charge in their brief that Mr. Sinclair received as dividends from the Continental Trading Company, Ltd., $230,500,00 face value of United States Liberty First 3½% Bonds, which he turned over to Secretary Fall in May, 1922, as a bribe" (R. p. 816).

There is no Conflict in the Evidence.

The District Court found that there was no conflict in the evidence on the question of fraud (R. pp. 228-9). In like manner the Court of Appeals finds that there is no conflict in that evidence. The language of the Court of Appeals is as follows:

> "The views of the trial court are not controlling as the situation presents, not so much a dispute as to the evidence or the veracity of witnesses as it does an opportunity for differences of opinion in respect to the inferences to be drawn from all the circumstances appearing in the record. This Court

> has the same right to draw conclusions from the silence or evasiveness of witnesses as has the trial court * * *. Further, the conclusion of the trial court as to fraud is a mixed one of law and fact" (R. p. 818).

The Court of Appeals Drew Unlawful Inferences.

The Court of Appeals found no direct evidence of fraud but based its conclusions solely upon inferences (R. p. 838). Our contention is that in reaching its conclusions, the Court violated well known and fundamental rules of evidence in relation to inferences in that (a) it drew sinister inferences from given circumstances when inferences consistent with honesty were more reasonably to be drawn therefrom; (b) it drew unauthorized sinister inferences against your petitioners from failure and refusal to testify on the part of witnesses called by the United States; (c) it drew unauthorized sinister inferences from failure of your petitioners to call witnesses, and (d) drew inferences from inferences.

Illustrations of Unlawful Inferences.

(a) As we have seen *supra* the central element in the claim of fraud by counsel and in the finding of fraud by the Court of Appeals, relates to Liberty Bonds. Counsel claim, and the Court of Appeals finds, that in April, 1922, the Continental Trading Company, Ltd., purchased $300,000 of First 3½% Liberty Bonds, and that in May, 1922, $230,500 of First 3½% Liberty Bonds, some of which were included in the bonds purchased by the Continental Trading Company, Ltd., were found in the possession of Secretary Fall's son-in-law Everhart. Counsel claim, and the Court of Appeals finds, that said bonds were delivered or caused to be

delivered to Secretary Fall by Mr. H. F. Sinclair. This claim and finding is based upon the following evidence:

In New York on November 14, 1921, and prior to any meeting between Secretary Fall and Mr. Sinclair, and prior to any thought of leasing Teapot Dome on Mr. Sinclair's part, so far as the evidence discloses, H. M. Blackmer, after some previous negotiations, "made a deal" with A. E. Humphreys for the purchase of approximately thirty-three million barrels of oil. No one was present at the time of this deal excepting Mr. Blackmer and Mr. Humphreys. After the deal had been completed by parol, Mr. Humphreys telegraphed Senator Charles S. Thomas, his attorney, to come to New York and reduce the contract to writing (R. p. 452). On November 17, after Senator Thomas had arrived, Mr. Blackmer stated to Senator Thomas and Mr. Humphreys that the purchaser to be designated in the contract would be Continental Trading Company, Ltd., a Canadian corporation (R. p. 452). Mr. J. E. O'Neil, representing the Prairie Oil & Gas Company, and Mr. R. W. Stewart and Mr. H. F. Sinclair, representing Sinclair Crude Oil Purchasing Company, were present when the contract was to be reduced to writing on November 17 (R. pp. 445-7) and additional contracts were to be made and were made as follows: One whereby Sinclair Crude Oil Purchasing Company and Prairie Oil & Gas Company jointly purchased from Continental Trading Company at an advance of twenty-five cents per barrel the oil purchased by Continental from Mr. Humphreys (R. pp. 454-6), and one whereby Sinclair Crude Oil Purchasing Company and Prairie Oil & Gas Company purchased from the Humphreys Company additional amounts of oil (R. pp. 448-50). When Blackmer named Continental Trading Company, Ltd., as

his nominee to be designated as purchaser in his contract with Humphreys, some question arose as to the financial responsibility of the Continental. The statement was then made by Mr. O'Neil that the Prairie Oil & Gas Company and the Sinclair Crude Oil Purchasing Company were to buy the oil and would guarantee the performance of the contract. His language was: "We will receive that oil—we expect to pay for it and we will guarantee the performance of the contract" (R. p. 444). The guaranty in writing was affixed to the contract (R. p. 447 8).

Senator Thomas, a witness for the United States, after testifying concerning the matters above, said:

> "I don't know who constituted the Continental Trading Company, Ltd., except that Mr. Osler appeared there as an officer of it. I did know that the Prairie Oil and Gas Company was interested there in making another contract with Mr. Humphreys to take effect at the close of the first contract and that the Sinclair Crude Oil Company was represented jointly with the Prairie Oil and Gas in the purchase of that remaining oil. I assumed that from the presence of Mr. Sinclair. That purchase was accomplished right there. I do not know whether Mr. Sinclair or Mr. O'Neil had any other interest than that." (R. pp. 451 2).

On the same subject, Mr. Humphreys, also a witness for the United States, testified as follows:

> "I had no knowledge who constituted or were interested in the Continental Trading Company other than Mr. Osler.
>
> "I know there was another contract executed there the same day, and that one of the parties to

> that other contract aside from my companies was the Prairie Oil & Gas Company and the other party was the Sinclair Crude Oil Purchasing Company. Stewart and Sinclair represented the Sinclair Crude in making this contract and O'Neil represented the Prairie. I had no knowledge of any other purpose of their being there." (R. pp. 453-4).

Mr. Osler testified that he was asked by someone whom he designated as his client, to incorporate the Continental Trading Company for the purpose of having that company purchase the oil from Mr. Humphreys. He declined to state the name of his client (R. p. 512). His client disclosed to Mr. Osler the names of his associates who were interested with him in the matter (R. p. 504). Speaking with reference to the meeting on November 17 in New York, Mr. Osler testified:

> "I saw some at least of the persons named to me by my original client in the matter, whose name I am not at liberty to disclose." (R. p. 515)

He further says:

> "If I saw Sinclair in New York he was a total stranger to me. I had never seen him before and did not know him by sight. I don't think I know his name even and it made no impression upon me and I can't visualize him at the meeting with anybody I met in New York on that occasion. It is quite possible he was at one or more of these meetings and of course I don't know, but speaking from recollection it does not come into my mind at all. As to whether James O'Neil was present at these meetings in New York, I am not making any statement as to any other persons that I saw there. I must refuse to

do that. I have merely made this statement as to Sinclair in order to clear up what otherwise might be a misunderstanding." (R. pp. 514-5)

This is the whole of the evidence from which the inference is drawn that Mr. Sinclair was connected with or in any manner interested in the Continental Trading Company, Ltd. He was not present when the deal was made by Blackmer for the purchase of oil from Humphreys, but was present at the meeting when the contract carrying out the parol deal was reduced to writing. A valid reason for his presence on the latter occasion is given by the Government's witnesses. Mr. Sinclair and Mr. R. W. Stewart were acting for the Sinclair Crude Oil Purchasing Company, first in purchasing in conjunction with the Prairie Oil & Gas Company the oil from Continental Trading Company, Ltd., which that company as nominee of Blackmer, had bought from Humphreys, and second, in purchasing in conjunction with the Prairie Oil & Gas Company additional amounts of oil from Humphreys. Both of these contracts last mentioned were introduced in evidence by the United States as a part of its case, one of them in direct connection with the above testimony of Humphreys and Thomas, and the other immediately following that testimony (R. pp. 448-50; 454-6).

Notwithstanding the uncontradicted evidence given by the witnesses for the United States, Humphreys and Thomas, showing reasons for the presence of Mr. Sinclair, consistent with the highest integrity on his part, and showing nothing inconsistent therewith, the Court of Appeals drew the inference solely from this evidence, that he was interested in the Continental Trading Company, Ltd., and

therefore a seller of the oil to Sinclair Crude Oil Purchasing Company which he and Stewart were there representing in the purchase in conjunction with Prairie Oil & Gas Company represented by O'Neil, and this inference is the keystone of the arch upon which the Court of Appeals built all its inferences that these petitioners or any of them were guilty of fraud.

(b) One Everhart, a witness called by the United States, claimed his constitutional privilege against self-incrimination and from this, although there was no evidence of collusion or concert of action relating to such refusal between the witness and your petitioners or any of them or anyone representing them, the Court of Appeals drew the unauthorized inference that Everhart could not have obtained by purchase the bonds which the Court found were in his possession in May, 1922, and from that inference drew an inference of fraud against your petitioners.

(c) One H. M. Blackmer and one James E. O'Neil were called as witnesses for the United States under proceedings to take their depositions in France. They declined to testify, as under the French Law they were entitled to do (R. p. 547, lines 35-38; p. 548, lines 26-29). There was no evidence of any kind that in so refusing to testify, they or either of them were acting in concert or collusion with your petitioners or any one representing any of them, and yet from their mere declination to testify the Court of Appeals drew inferences of fraud against your petitioners.

(d) One H. S. Osler, a Canadian barrister, was called as a witness for the United States who sought his deposition at Toronto, Canada, and on the ground that communi-

cations with his client (who was not shown to be any of your petitioners or anyone representing them or any of them) were privileged, he declined to answer certain questions and yet such declination was used as a basis from which to infer fraud against your petitioners.

(e) Albert B. Fall, former Secretary of the Interior, was not called as a witness by the United States; nor was he called as a witness by your petitioners. The fact that he was not called as a witness by your petitioners was used by the Court of Appeals as a basis for inferences of fraud against your petitioners.

(f) Harry F. Sinclair was not called as a witness by either party. The fact that he was not called by your petitioners was used as the basis from which inferences of fraud are found against your petitioners although there was no evidence introduced connecting him with the Continental Trading Company, Ltd., or with any of the Liberty Bonds claimed to have been purchased by it or claimed to have been found in the possession of Everhart.

(g) From the above inferences that Mr. Sinclair was interested in the Continental Trading Company, Ltd., and that Everhart did not obtain by purchase the bonds mentioned, the Court of Appeals by a series of inferences bridging between these two, reached its conclusions of fraud. It was inferred from Mr. Sinclair's inferred interest in Continental Trading Company, Ltd., that he was entitled to share in the profits made by Continental Trading Company, Ltd., on the resale of the Humphreys oil to the companies represented by Mr. Sinclair, Mr. Stewart and Mr. O'Neil. It was then inferred from the above infer-

ences that these profits, or some of them, were distributed among the shareholders as early as May, 1922, as there is no evidence of any such distribution. It was next inferred from these inferences that Mr. Sinclair received his inferred share of profits of the Continental Trading Company, Ltd., in Liberty Bonds. It was next inferred from the inferences just above mentioned, from inferences based upon failure or refusal to testify of witnesses called by the United States, and from failure of your petitioners to call Mr. Fall and Mr. Sinclair as witnesses, and from an inference that Mr. Sinclair was the only one of those present at the execution of the contract between Continental Trading Company, Ltd., and Humphreys who could have had any motive to deliver Liberty Bonds to Fall, that Mr. Sinclair, for a fraudulent purpose, transferred the bonds inferred to have been so received by him, or some of them, to Everhart or Fall, or both.

2.

Certain Incompetent Evidence Used as Basis for Inferences.

We submit further, that in drawing its inferences and reaching its conclusions the Court of Appeals, over the objections of your petitioners, used and weighed against your petitioners incompetent evidence. Many entries and records of a private character in books and records of banks and brokers and other private persons, entire strangers to the case, made in the absence of your petitioners or any of them or any of their representatives, to

which none of your petitioners nor anyone representing any of them were parties, were admitted in evidence by the District Court subject to the objections as to each of them, that the same was not in any way connected with your petitioners or anyone representing them, that it was *res inter alios acta* and that it was in the nature of hearsay as to your petitioners (R. pp. 742-3).

Leave to move to strike such evidence was reserved and a motion to strike was made in accordance with the leave granted (*ibid*). The incompetent evidence was as follows:

	Plff.'s Exhibit	*Record Page*
1. Ledger sheets of Dominion Bank of Canada in account between that bank and Continental Trading Company, Ltd.	138	488-9
2. Brokers' bills purporting to show sales of Liberty Bonds by Rhoades & Co., Walker Bros. and Saloman Bros. & Hutzler to Dominion Bank of Canada	140	489-91
3. Original record sheets of Saloman Bros. & Hutzler consisting of receipt and delivery sheets purporting to show a sale of Liberty Bonds by said firm to Dominion Bank of Canada	141	494-5
4. Records of Rhoades & Co. consisting of cashier's memorandum of receipt of certain Liberty Bonds purchased by Rhoades & Co. from First Trust & Savings Bank of Chicago through First National Bank of New York; cancelled check of Rhoades & Co. to the order of First National Bank; cashier's memorandum of delivery by Rhoades & Co. to Dominion		

	Plff.'s Exhibit	*Record Page*
Bank of Canada of $50,000 Liberty Bonds and copy of letter from First Trust & Savings Bank of Chicago to Rhoades & Co.	142	497–9
5. Certain record sheets of Central Union Trust Co. of New York showing sales to Walker Bros. of certain Liberty Bonds by Central Union Trust Company	143	502–3
6. Ledger sheets of First National Bank of El Paso, Texas, purporting to show account between that bank and A. B. Fall	109	435
7. Deposit tickets made by First National Bank of El Paso, Texas, in account with A. B. Fall	110	437
	111	438
8. Ledger sheets of First National Bank of Pueblo, Colorado, purporting to show account between that bank and Tres Ritos Cattle & Land Co.	112	439
9. Deposit tickets made by First National Bank of Pueblo, Colorado, in account between that bank and Tres Ritos Cattle & Land Co.	113	
	114	535
10. Bill of sale from Logan & Bryan to First National Bank of Pueblo, Colorado, of certain Liberty Bonds, together with a memorandum made by said bank in connection with said bill of sale	115	535–6

	Plff.'s Exhibit	*Record Page*
11. Deposit ticket made by First National Bank of Pueblo, Colorado, in account between that bank and M. D. Thatcher Estate Company	119	536–7
12. Deposit ticket made by Exchange Bank of Carrizozo, New Mexico, in account between that bank and A. B. Fall	144	541–2
13. Ledger sheets of Exchange Bank of Carrizozo, New Mexico, purporting to show account between that bank and A. B. Fall	145	542
14. Duplicate of credit returns sheet kept by Exchange Bank of Carrizozo, New Mexico, showing various items forwarded by that bank for collection	146	542–3

The District Court considered the case as though all this evidence were competent and found for your petitioners with that evidence in the scale but upon consideration felt that the evidence was open to the objections made and held that it should be stricken out. It was by the Court of Appeals considered and weighed as competent evidence of facts and circumstances from which the Court drew its inferences of fraud.

3.

The Act of June 4, 1920.

We further contend that the Act of June 4, 1920 "directed" the Secretary of the Navy to conserve, develop, use and operate the properties within the naval reserves. The Court of Appeals in its opinion construes this provision of the Act not as mandatory but as permissive. The statute is still in force and is, as we contend, obligatory. It is a statute of great importance to the United States and to the Navy Department and to the public, which has not yet been construed by this Court.

4.

Shall the United States Do Equity?

Furthermore the Court of Appeals has decided an important question of general law in denying the right of your petitioner Mammoth Oil Company, in equity and good conscience to receive credit for the things received by the Government under the contracts, which the record shows was of a value in excess of $1,000,000. The general rule of law is that he who seeks equity must do equity and he who would rescind a contract for any cause may not retain without compensation values by him received under the contract.

5.

As to Sinclair Pipe Line Company and Sinclair Crude Oil Purchasing Company.

The bill alleges no fraud against Sinclair Pipe Line Company or Sinclair Crude Oil Purchasing Company. Neither in the bill nor in any claim of counsel nor in the evidence is there any charge of fraud against those companies. It is merely charged that they are trespassers.

In cancelling the easements and rights of way of the Pipe Line Company and confiscating without compensation its structures, the Court of Appeals says:

> "Its stock is owned by the Sinclair Consolidated Oil Corporation and the Standard Oil Company of Indiana in equal proportions. Mr. Sinclair is or was Chairman of the Board of Directors of Sinclair Consolidated Oil Corporation and probably its largest stockholder" (R. p. 880).

There was no evidence in the record on which to base a finding that Mr. Sinclair was *probably* the largest stockholder of Sinclair Consolidated Oil Corporation but the Court thereupon decided that Sinclair Pipe Line Company is a trespasser *mala fide* on the Reserve and not entitled to any accounting for the amount expended by it in constructing its pump station and pipe line thereon.

The record shows that the pipe line of Sinclair Pipe Line Company is a common carrier line over seven hundred miles in length, connecting the Salt Creek Oil Field of

Wyoming with trunk pipe lines in the Middle West, thus affording important markets to the oil producers and owners in Salt Creek Field, including the United States. The main pumping station of the line is located on the Reserve. The decree of the Court of Appeals peremptorily enjoins further trespass by Sinclair Pipe Line Company and thus gives that company no opportunity to procure a right of way whereby the line and structures may be kept on the Reserve, and in effect enjoins the removal of the structures and line from the Reserve. This not only confiscates the structures of the Pipe Line Company without compensation, but in practical effect stops operation of the whole line to the detriment of the oil owners and producers in the Salt Creek Field.

6.

Public Importance of the Case.

The charge of bribery of a Cabinet Officer, involving also a charge of illegal action on the part of a former President of the United States, makes this cause, as stated by the Court of Appeals, one in which not only the rights of the appellees and the Government of the United States are involved, but the interests of the public likewise. The fact that this suit is prosecuted under a special act of Congress by special counsel in that behalf appointed, as well as debates in Congress in relation thereto and the general publicity concerning the same in the press of the United States, emphasize the public importance of the cause and

make it the more necessary that no conclusion of the cause be reached except in full accord with the principles of law.

Moreover, the preservation of the rules of evidence is not mere matter of private concern but is matter of the highest public interest.

> "The settled rules of evidence which govern the trial of actions measure the extent and secure the protection of the rights of persons and property. Reversals, modifications, or variations of these rules produce instability and uncertainty in these rights, and breed distrust of courts and of governments."
>
> *Board of Comrs.* v. *Keene Five Cents Sav. Bank*, (C. C. A. 8) 108 Fed. 505, 510.

The attention of your Honorable Court is respectfully invited to the brief hereunto attached and herewith submitted in which there is set forth more in detail certain of the principal arguments in favor of your petitioners' contentions.

Wherefore, in view of the premises, petitioners and each of them pray that this Honorable Court will grant its Writ of Certiorari directed to the Circuit Court of Appeals for the Eighth Circuit, requiring that the record of said cause in the said court and its decree be certified to this Court, and that this Honorable Court will thereupon proceed to correct the errors complained of, reverse said decree and remand the said cause, and that this Honorable Court will give to your petitioners and each of them such other and further relief as the nature of the cause may

require and as to the Court may seem proper in the premises.

And your petitioners will ever pray.

Dated: November 3d, 1926.

MAMMOTH OIL COMPANY,

By JOHN W. LACEY,
MARTIN W. LITTLETON,
GEORGE P. HOOVER,
PAUL D. CRAVATH,
G. T. STANFORD,
HERBERT V. LACEY,
J. W. ZEVELY,
R. W. RAGLAND,
DOUGLAS M. MOFFAT,
Its Solicitors.

SINCLAIR CRUDE OIL PURCHASING COMPANY and SINCLAIR PIPE LINE COMPANY,

By EDWARD H. CHANDLER,
RALPH W. GARRETT,
Their Solicitors.

We hereby certify that we have examined the foregoing petition and that in our opinion it is well founded and is one in which the prayer of your petitioners should be granted by this Court.

JOHN W. LACEY,
MARTIN W. LITTLETON,
EDWARD H. CHANDLER,

Of Counsel for Petitioners.

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BRIEF IN SUPPORT OF PETITION.

Opinions of the Courts Below.

The opinion of the District Court in this case will be found at page 225 of the Record and is reported in 5 Federal Reporter, 2nd, at page 330. The opinion of the Court of Appeals, not as yet officially reported, will be found at page 795 of the Record.

Statement of the Case.

The case is stated in the Petition (pp. 1-7) to which this brief is attached and will not be repeated here. As was shown in the Petition, both the District Court and the Court of Appeals found that there was no conflict in the evidence. The District Court held not only that there was no direct evidence of fraud in the procurement of the contracts, but that there was no evidence from which fraud could lawfully be inferred. The Court of Appeals, however, while likewise finding that there was no direct evidence of fraud, held that the charge of counsel for the United States "in their brief, that Mr. Sinclair received as dividends from the Continental Trading Company, Ltd., $230,500 face value of United States Liberty First 3½% Bonds, which he turned over to Secretary Fall in May, 1922, as a bribe", had been sustained. It based such conclusion solely upon inferences. We submit that such inferences were drawn

in violation of fundamental rules of evidence and that in this the Court of Appeals decided important questions of law in a way untenable and in conflict with the weight of authority. To this question we shall devote most of our discussion although we shall specify and briefly discuss other errors committed by the Court of Appeals.

Specifications of Error.

First. The Court of Appeals erred in finding that there was any evidence as a matter of law to establish fraud in the making of the lease of April 7, 1922 and the supplemental agreement of February 9, 1923.

Second. In arriving at the conclusion that there was evidence, as a matter of law, to establish fraud in the making of the lease and supplemental agreement, the Court of Appeals erred in disregarding fundamental rules of law in testing the evidence and in drawing unlawful inferences.

Further specifying error relating to the erroneous finding of fraud covered by Specifications of Error Nos. 1 and 2, the Court of Appeals erred in the following particulars:

(a) The Court of Appeals erred in inferring that Sinclair was a shareholder of or otherwise interested in the Continental Trading Company, Ltd., without any fact or circumstance proven from which such an inference could properly be drawn.

(b) The Court of Appeals erred in inferring that the Continental Trading Company, Ltd., paid any dividend or distributed any of its assets to its shareholders, either in Liberty Bonds or otherwise, in or

prior to May, 1922, without any fact or circumstance proven from which such an inference could properly be drawn.

(c) The Court of Appeals erred in drawing inferences of fraud against your petitioners from the failure to testify on the part of witnesses called by the United States and from the failure of petitioners to call Fall and Sinclair as witnesses.

(d) The Court of Appeals erred in inferring, upon the inferences above stated, that Sinclair as a shareholder of or otherwise interested in the Continental Trading Company, Limited, received dividends in Liberty Bonds, without any circumstances or fact proven from which such an inference could properly be drawn.

(e) The Court of Appeals erred in inferring, based upon the preceding inferences, that Sinclair received $230,500 in United States First Liberty Loan 3½% Bonds out of a total of $300,000 of such bonds, without any circumstances or fact upon which to rest such inference, and in the face of the repeated assertion by the court that Blackmer, O'Neil, Sinclair, Stewart and Osler were the persons interested in and shareholders of the Continental Trading Company.

(f) The Court of Appeals erred in inferring that the witness Everhart did not purchase Liberty Bonds shown to have been in his possession, solely because said witness Everhart claimed his constitutional privilege against self-incrimination, there being no fact or circumstance in the record upon which to base said inference, which rests solely upon the principal enunciated by the Court of Appeals that no honest man ever claims the constitutional privilege.

(g) The Court of Appeals erred in inferring, from an inference that because Everhart claimed his constitutional privilege, he could not have purchased said bonds and from the circumstance that some of these bonds were claimed to have been identified by their serial numbers as bonds which had been purchased by the Continental Trading Company, Limited, that Everhart must have received said bonds from Sinclair or the Continental Trading Company, Limited.

(h) The Court of Appeals erred in holding that said bonds were delivered to Everhart by Sinclair or the Continental Trading Company, Limited, as his agency, and that Everhart received these bonds for the purpose of delivering them to Fall as a bribe, without any fact or circumstance in the record upon which to rest such inference.

(i) The Court of Appeals erred in inferring that the said bonds were paid or delivered to Fall as a bribe, as a consideration for his granting or aiding in the grant of the lease upon Naval Petroleum Reserve No. 3.

(j) The Court of Appeals erred in inferring, because Sinclair, as the representative of the Mammoth Oil Company, had negotiated a lease in part with Secretary Fall for Naval Petroleum Reserve No. 3, that Sinclair was the person who paid the bribe to Fall through Everhart.

THIRD. The Court of Appeals erred in holding that certain books, records and other documentary evidence, stricken out by the District Court, were competent evidence to establish that certain Liberty Bonds were purchased by the Continental Trading Company and received by Fall or his son in law, Everhart.

FOURTH. The Court of Appeals erred in construing the Act of June 4, 1920, in holding that the discretion to determine whether it was necessary to take the oil from the ground was lodged with the Secretary of the Navy, and in holding that the Act was not mandatory but permissive, and in holding that the policy was not determined by Congress in the Act of June 4, 1920 but was left to the determination of the Secretary of the Navy.

FIFTH. The Court of Appeals erred in holding that your petitioner, Mammoth Oil Company, had no right in equity and good conscience to receive credit for the value of the things received by the Government from the Mammoth Oil Company under the lease and supplemental agreement.

SIXTH. The Court of Appeals erred in holding that the Sinclair Pipe Line Company and Sinclair Crude Oil Purchasing Company were trespassers *mala fides* on the Government lands as no fraud was alleged or proved as to either of them.

SEVENTH. The Court of Appeals erred in holding that the Sinclair Pipe Line Company and the Sinclair Crude Oil Purchasing Company should be enjoined and restrained from entering upon Naval Petroleum Reserve No. 3.

EIGHTH. The Court of Appeals erred in enjoining and restraining the Sinclair Pipe Line Company, a common carrier, from entering upon Naval Petroleum Reserve No. 3, without affording it the opportunity to procure from the Government authorities a right of way or easement to use

the surface of said lands or, failing to procure such authority, without affording it the right to remove from said land the property it had in good faith placed thereon.

NINTH. The Court of Appeals erred in enjoining and restraining Sinclair Crude Oil Purchasing Company from entering upon Naval Petroleum Reserve No. 3 without affording it the right to remove from said reserve the property it had in good faith purchased and constructed thereon.

ARGUMENT.

Specifications of Error Nos. 1 and 2.

In dealing with the question as to whether there was any evidence, as a matter of law, to establish fraud in the making of the lease, the Court of Appeals adopted the theory of the Government, as stated in the Government's brief in the Court of Appeals, and stated it as follows:

> "It is the theory of the Government, bluntly stated, that Secretary Fall received from Harry F. Sinclair, sole owner of appellee, Mammoth Oil Company, a pecuniary consideration which influenced him in granting to said Oil Company a lease of Naval Petroleum Reserve No. 3, commonly known as 'Teapot Dome'. Counsel for the United States charge in their brief that Mr. Sinclair received as dividends from the Continental Trading Company, Ltd., $230,500.00 face value of United States Liberty First 3½% Bonds, which he turned over to Secretary Fall in May, 1922, as a bribe. This charge is as grave and serious an accusation as could be made against a public official, augmented by the fact that the official so charged was in a sense trustee for the people of the United States of their public lands. *The case is one therefore in which not only the rights of the appellees and the Government of the United States are involved, but the interest of the public likewise*" (Italics ours). (R. p. 816.)

Again the Court of Appeals, speaking through Judge Kenyon, said on this subject:

> "The trial Court in its opinion refers to some of the circumstances in the case as suspicious, but finds

there are missing links in the testimony, which are supposedly the connection of Sinclair with the Continental Trading Company, Ltd., and with the acquisition of Liberty Bonds by Everhart, used for his and Secretary Fall's credit. *There is not sufficient direct evidence in this record to show these matters. The really determinative question therefore as to this branch of the case is: Are the reasonable inferences and presumptions legitimately and properly to be drawn from all the facts and circumstances disclosed in the evidence sufficient to supply the so-called missing link?*" (Italics ours.) (R. p. 838.)

It will be observed from these two excerpts taken from the opinion of the Court of Appeals that the finding that the evidence established fraud as a matter of law is predicated upon the proposition made in the Government's brief and adopted by the Court here, that Mr. Sinclair received as dividends from the Continental Trading Company $230,500, face value, of United States First 3½% Liberty Bonds, which he turned over to Secretary Fall in May, 1922, as a bribe. As to this, the Court of Appeals says: "There is not sufficient direct evidence in this record to show these matters" (R. p. 838). And it then proceeds to consider presumptions and inferences which it feels may be drawn from the facts proven to determine whether the alleged connection of Sinclair with the Continental Trading Company and with the delivery of the bonds to Everhart and Fall has been established. It must be borne in mind that the Record does not show through any witness or document or in any manner, that Sinclair ever was a stockholder in the Continental Trading Company, Ltd. The Record does not show that Sinclair ever received as a dividend any

Liberty Bonds from the Continental Trading Company, Limited, or that the Continental declared or paid any dividend prior to the time that certain Liberty Bonds were found in the possession of the witness Everhart. The Record does not show that Sinclair ever met or dealt with Everhart, or that he ever at any time delivered to Everhart or Fall any Liberty Bonds. The finding that Sinclair was a shareholder of the Continental Trading Company, Limited, and that he did receive Liberty Bonds as dividends, and that he turned these Liberty Bonds over to Everhart and Fall as a bribe, upon which the Court of Appeals predicates its finding of fraud, rests solely upon what the Court insists are inferences and presumptions which may be legitimately and properly drawn from all the facts. All of the evidence which bears upon the purchase of oil from Humphreys by Blackmer for the Continental Trading Company, Ltd., is stated in the petition. We insist that if an inference is to be drawn that Sinclair was a shareholder in the Continental Trading Company, Ltd., such an inference must be drawn solely from the testimony of Humphreys and Thomas with respect to the purchase of the oil by Blackmer from Humphreys and the resale thereof to the Prairie Oil & Gas Company and the Sinclair Crude Oil Purchasing Company, and may not be drawn from failure to testify on the part of witnesses called by the United States or from failure of petitioners to call witnesses to disprove such inference. Such an inference may not be drawn from other inferences. It must be drawn from evidence appearing in the record of facts or circumstances proved.

The only testimony in the Record from which any inference can be drawn respecting Sinclair's alleged connection

with the Continental Trading Company is the testimony of Senator Thomas, the testimony of Mr. Humphreys and the testimony of Mr. Osler. Senator Thomas testified:

> "I did know that the Prairie Oil and Gas Company was interested there in making another contract with Mr. Humphreys to take effect at the close of the first contract and that the Sinclair Crude Oil Company was represented jointly with the Prairie Oil and Gas in the purchase of that remaining oil. I assumed that from the presence of Mr. Sinclair. That purchase was accomplished right there. I do not know whether Mr. Sinclair or Mr. O'Neil had any other interest than that" (R. pp. 451-52).

Mr. Humphreys testified:

> "I had no knowledge who constituted or were interested in the Continental Trading Company other than Mr. Osler. I know there was another contract executed there the same day, and that one of the parties to that other contract aside from my companies was the Prairie Oil & Gas Company and the other party was the Sinclair Crude Oil Purchasing Company. Stewart and Sinclair represented the Sinclair Crude in making this contract and O'Neil represented the Prairie. I had no knowledge of any other purpose of their being there" (R. pp. 453-54).

Mr. Osler, referring to the meeting on November 17th in New York City testified:

> "I saw some at least of the persons named to me by my original client in the matter, whose name I am not at liberty to disclose" (R. p. 515).
>
> "If I saw Sinclair in New York he was a total stranger to me. I had never seen him before and

did not know him by sight. I don't think I know his name even and it made no impression upon me and I can't visualize him at the meeting with anybody I met in New York on that occasion. It is quite possible he was at one or more of these meetings and of course I don't know, but speaking from recollection it does not come into my mind at all. As to whether James O'Neil was present at these meetings in New York, I am not making any statement as to any other persons that I saw there. I must refuse to do that. I have merely made this statement as to Sinclair in order to clear up what otherwise might be a misunderstanding" (R., pp. 514-15).

It will be recalled that the testimony shows that Mr. Osler was the Barrister in Canada who organized the Continental Trading Company and acted for Mr. Blackmer in the transaction.

These three witnesses furnish all of the evidence, and the whole of the evidence, with respect to the alleged connection of Mr. Sinclair with the Continental Trading Company, Limited. We maintain that the evidence of Humphreys and Thomas clearly shows that Sinclair, as one of the representatives of the Sinclair Crude Oil Purchasing Company, which was one of the ultimate purchasers of the oil which was being sold, as well as the purchaser from Mr. Humphreys of his remaining oil had a legitimate reason for being present at the conference. In the face of this direct evidence that Sinclair had a reason for being present at the conference consistent with the highest integrity on his part, the Court of Appeals drew an inference that he was there for a fraudulent purpose.

The Court of Appeals, in dealing with this evidence and endeavoring to draw inferences from it, says:

> "While it is true that Blackmer carried on the preliminary and final negotiations for the purchase of the Humphreys oils the testimony of Thomas and of Humphreys shows that Blackmer was acting for other gentlemen as well as for himself. Under the contract entered into between the Continental Trading Company, Ltd., and the Humphreys Companies, the Continental Trading Company, Ltd., was quite sure to make a profit of approximately $8,000,000.00 if it kept the contract. This was surely not all for Blackmer. The other gentlemen sitting around the New York luncheon table, with the exception of Humphreys and Senator Thomas, were also engaged in this piece of high finance" (R. p. 840).

Further, the Court of Appeals says, speaking of Sinclair:

> "He was present with the other gentlemen when the Humphreys matters were discussed, and when the negotiations were concluded and contracts signed. Is it reasonable to suppose that the guaranty of the Humphreys contract made by Sinclair and Stewart acting for the Sinclair Crude Oil Purchasing Company would be made unless Sinclair had something to say as to the affairs of the Continental Trading Company, Ltd.? Would he participate in an arrangement by which the stockholders of the Company he represented would be mulcted to the extent of twenty-five cents per barrel of oil, unless he were participating in the profits thereof? Surely here is something laid at the door of Sinclair requiring explanation. It is no answer to say it relates to a matter not in this case. The Continental Trad-

> ing Company, Ltd., and its affairs occupy an important position in this case, not eliminated by the evasiveness of its President" (R. p. 841).

It will be observed from this quotation from the opinion of the Court of Appeals that the Court, in effect, bases its finding upon an inference that Sinclair's presence at this conference and his signing, together with Stewart, on behalf of Sinclair Crude Oil Purchasing Company, the guaranty of the performance of the contract between the Continental Trading Company and Humphreys, which is all that there is in the Record with respect to Sinclair's inferred connection with the Continental Trading Company, establishes that he was a stockholder in the Continental Trading Company, Limited. We maintain that this inference which the Court attempts to draw is illegitimate and wholly unwarranted. If the presence of Sinclair is reasonably accounted for by the fact that he was a representative of the Sinclair Crude Oil Purchasing Company, which was one of the ultimate purchasers of this oil from the Continental Trading Company, Ltd., as well as a purchaser of additional oil from Humphreys, then the reasonable inference and the only inference which the rules of evidence permit to be drawn is that he was present at and participated in the conference solely as such representative. Any other inference attempted to be drawn with respect to this does not rise to the dignity of an inference but is a pure speculation or conjecture. This is borne out by the extraordinary language of the Court of Appeals which, when speaking of the profit which the Continental Trading Company, Ltd., "was quite sure to make," says:

> "This was surely not all for Blackmer. The other gentlemen sitting around the New York luncheon

table, with the exception of Humphreys and Senator Thomas, were also engaged in this piece of high finance" (R. p. 840).

This is simply assertion, based upon speculation and conjecture. If we are to adopt the illegitimate and unwarranted inference of the Court of Appeals we do violence to all of the rules applicable to inferences and presumptions. We must infer that Sinclair and O'Neil and Stewart were engaged in a transaction which had for its object the cheating of the Companies which they represented. This is against the presumptions which obtain with respect to the dealings of men.

In a charge such as that made against Sinclair, he is presumed innocent and that presumption overrides all other presumptions until it is overthrown by evidence.

We inquire, what fact was certainly established with respect to this transaction upon which the Court of Appeals bases this inference that Sinclair was a stockholder in the Continental Trading Company? For the inference, to be allowable and defensible, must be an inference which is based upon a certain, proven fact or a circumstance which has been established. It is not permissible for the Court to infer a circumstance or to infer a fact. The fact must be in evidence and the inference must arise from it. In this particular the Court of Appeals has inferred a fact and a whole fact, on which it predicates an inference.

The Court of Appeals says:

> "Would he participate in an arrangement by which the stockholders of the Company he represented would be mulcted to the extent of twenty-five cents per barrel of oil, unless he were participating in the profits thereof?" (R. p. 841).

A more natural and more reasonable interrogatory,—one in accordance with the facts and the presumption on the facts is: Would he dare to participate in an arrangement by which the stockholders of the Company which he represented would be mulcted to the extent of twenty-five cents per barrel of oil?

The Court of Appeals presumes that Sinclair (and Stewart) could not have sat by, even though the Company which he represented was required to pay twenty-five cents more per barrel than had been agreed to be paid by Blackmer in the purchase from Humphreys, without practicing a fraud upon the Company which he represented. Again, we maintain that the presumption that men act honestly until the evidence and the facts show the contrary forbade the Court attempting to draw any such inference. There is nothing here in this connection to show that the Prairie Oil and Gas Company or the Sinclair Crude Oil Purchasing Company could have bought the oil directly from Humphreys at any price. On the contrary, the evidence shows that Blackmer, for a considerable period prior to the 14th day of November, had been negotiating with Humphreys for the purchase of this oil and on that day he concluded negotiations with Humphreys by himself. There is nothing to show that if the Sinclair Crude Oil Purchasing Company and the Prairie Oil and Gas Company wanted this amount of oil that they could have gotten it from any other source or for any less price than $1.75 per barrel; and therefore the statement of the Court of Appeals that these companies were mulcted to the extent of twenty-five cents a barrel is an assumption.

The Court of Appeals further says in this connection:

> "It is apparent, we think, that this Continental Trading Company, Ltd., was merely the agency of some of the gentlemen who sat around the luncheon table in New York negotiating for the purchase of the Humphreys oil, and was to do as a corporation what these gentlemen were evidently not willing to undertake as principals" (R. p. 841).

Is it fair to infer that because the Court of Appeals thought from one inference predicated upon another that the Continental Trading Company, Ltd., was "merely the agency" of some of the gentlemen who sat around the luncheon table negotiating for the purchase of the Humphreys oil, that Harry F. Sinclair was a stockholder in the Continental Trading Company, Ltd.? This is as strong as the Court seems able to express it.

How much more natural and reasonable is the inference which was drawn by the District Court in its opinion, where it says:

> "However, the testimony of Humphreys and Thomas clearly disclose that Osler and the Continental Trading Company were the creatures of Blackmer, which leaves us in the transaction with no other connection between Sinclair and Fall, except by mere suspicion or guess, and even this at a time considerably in advance of any established contact between them" (R. p. 258).

The Court of Appeals, commenting further upon the meeting of November 17th, said:

> "None other beside Sinclair in the company of men sitting around the table and arranging the

> Humphreys deal had any connection with Secretary Fall, either at that time or in the future, so far as the record shows. While this was prior to the signing of the lease, it is reasonably certain that negotiations were then either being carried on with reference thereto, or were in immediate prospect" (R. p. 845).

In this the Court of Appeals indulges in pure conjecture. There is not a syllable of evidence or an inference to be drawn from an established fact or circumstance that Sinclair had met Secretary Fall before December 31, 1921. Without any fact or circumstance on which to base it the Court of Appeals infers, or attempts to infer, that negotiations were in November, 1921, being carried on with reference to the lease of Teapot Dome or that negotiations were in immediate prospect. The Court infers that none other beside Sinclair present at the conference had any connection with Secretary Fall, either at that time or in the future, merely because the record does not show otherwise. This is an unjustifiable inference. The record quite naturally does not show whether or not Secretary Fall had any connection with any of the others present.

We have submitted the whole evidence relating to the purchase by the Continental Trading Company of the Humphreys oils, and we have called attention to the manner in which the Court of Appeals attempts to establish that Sinclair was a stockholder in the Continental Trading Company by inferring facts—by conjecture and by indulging in illegitimate presumptions. We maintain that the Record is destitute of evidence which would warrant a legitimate inference that Sinclair was a stockholder in the Continental Trading Company at any time or had any interest in it.

The Court of Appeals proceeds further with another class of inferences and presumptions. These inferences are drawn or attempted to be drawn from wholly unrelated incidents in the record. In order to bolster up the inferences upon inferences which the Court of Appeals has drawn with respect to the Continental Trading Company purchase of the Humphreys oil, the Court says:

> "The silence and evasions in this suit suggest many pertinent inquiries. Why should Osler refuse to disclose the connection, if any, of Sinclair with this Company? Why is silence the answer of a former Cabinet official to the charge of corruption? Why is silence the only reply of Sinclair, a man of large business affairs, to the charge of bribing an official of his Government? Why is the plea of self-incrimination,—one not resorted to by honest men,—the refuge of Fall's son-in-law Everhart? It would seem that men of standing in the business world when accused of being bribers would be quick to resent the charge and eager to furnish all information possible that might remove such stain upon their reputations. It is incredible that a former Cabinet official in the position of trustee of the public lands for the people of the United States, when accused of bribery and corruption in connection with his official duty in matters where great public interests are concerned, would not be quick to refute the same. Men with honest motives and purposes do not remain silent when their honor is assailed. It is amazing that officers of great oil companies, such as Blackmer and O'Neil, would flee their country and refuse to testify in a suit brought by their own Government to unearth an alleged fraud practiced on it by a high official. While Secretary Fall is not technically a party to this suit, he was the agent for the Government in

> the transactions provocative of this case, and his former principal is a party. Sinclair is in fact a party because the Mammoth Oil Company is his creation and agent. Its acts are his acts" (R. pp. 841, 842).

Is there anything in the Record to charge Sinclair or the Mammoth Oil Company with the refusal of Osler to testify? Is it a legitimate inference that because Osler claimed the privilege of an attorney that Sinclair was a stockholder or interested in the Continental Trading Company, Ltd.? Is an inference of this unrelated fact to be piled upon the other inferences which the Court of Appeals drew with reference to the Continental Trading Company's purchase of the Humphreys oils? For aught that appears upon the record, Osler's claim of privilege was upon justifiable grounds. He contested the matter in the courts of his own country, which courts, it will appear from their opinion, held that he was entirely within his rights and it was his duty to make the contest (R. p. 216). Does this circumstance respecting Osler in anywise logically or legitimately aid in an attempt to establish that Sinclair was a stockholder or otherwise interested in the Continental Trading Company?

Again, is the silence of a former Cabinet official, Secretary Fall, to the charge of corruption a fact or circumstance established in this Record from which a legitimate inference may be drawn that Sinclair was a stockholder or otherwise interested in the Continental Trading Company, Limited? Fall was not a party to the action. Is it not a more legitimate inference from Fall's silence under the charge of corruption in a case in which he was not a party, that he awaited the time he might be obliged to meet this

charge directly in case it was made against him? Why should the silence of Fall be charged up wholly to the defendant Mammoth Oil Company or to Sinclair and be used as a fact from which to draw an inference that Sinclair was a stockholder or otherwise interested in the Continental Trading Company, when Fall was equally available to the Government as a witness as to the petitioners?

The Court of Appeals says, "Why is silence the only reply of Sinclair, a man of large business affairs, to the charge of bribing an official of his Government?" Sinclair was not charged in the bill with bribery or with bribing an official of the Government. There was no evidence introduced nor any legitimate inference from evidence introduced or fact proven that Sinclair had bribed an official of the Government. The only charge that Sinclair had bribed an official of the Government will be found in the brief of Special Counsel for the Government referred to and adopted by the Court of Appeals in its opinion (R. p. 816).

We submit that the mere silence of Sinclair will not supply lacking affirmative proof against him or the Mammoth Oil Company, but that the rule is that it may be considered in weighing proofs already adduced tending to fix a liability on him in matters where complete and more exclusive knowledge of the facts concerning which he is silent is laid at his door. Is the silence of Sinclair under the circumstances a fact or circumstance from which the Court of Appeals is warranted in drawing the inference that Sinclair was a stockholder or otherwise interested in the Continental Trading Company? What fact or circumstance as to the organization of the Continental Trading Company—or as

to who were its stockholders—was laid at the door of Sinclair? Is it the rule that a mere charge against a party, wholly unsupported by proof, is something laid at his door for him to disprove or be found guilty?

The Court of Appeals says: "Why is the plea of self-incrimination—one not resorted to by honest men—the refuge of Fall's son-in-law, Everhart?" (R. p. 842). From the fact that Everhart claimed his constitutional privilege, which the Court of Appeals does not go so far as to challenge, the inference is attempted to be drawn that in some way this tends to prove that Sinclair was a stockholder in the Continental Trading Company or otherwise interested in it. The rule is universal that the assertion of a privilege by a witness which relieves him from testifying cannot be charged to either party to the action. Is it the rule that the constitutional privilege against self-incrimination is only resorted to by dishonest men?

The Court further says:

> "It is amazing that officers of great oil companies, such as Blackmer and O'Neil, would flee their country and refuse to testify in a suit brought by their own Government to unearth an alleged fraud practiced on it by a high official" (R. p. 842).

And from this in the connection in which it is used, apparently the Court of Appeals attempts to draw the inference that this circumstance in some way tends to prove that Sinclair was a stockholder or otherwise interested in the Continental Trading Company, Ltd. The Government propounded interrogatories to Blackmer and O'Neil, who declined to testify. Surely the refusal of Blackmer and O'Neil to testify in response to interrogatories of the Gov-

ernment is not a fact from which an inference can be drawn that Sinclair was a stockholder or otherwise interested in the Continental Trading Company, and is in no wise chargeable to the Mammoth Oil Company. There is nothing in the record to show that the Mammoth Oil Company or Sinclair was in anywise responsible for the refusal of these witnesses to testify, nor that they were any more available as witnesses for the Mammoth Oil Company than for the Government.

The rule applicable to the drawing of inferences from proven facts or circumstances was clearly disregarded by the Court of Appeals, as evidenced by its declaration that:

> "These gentlemen have the right to remain silent, to evade, to refuse to furnish information and thus to defy the Government to prove its case; but a court of equity has the right to draw reasonable and proper inferences from all the circumstances in the case, and especially from the silence of Secretary Fall and from the failure of Sinclair to testify" (R. p. 842).

Again the Court of Appeals disregarded the law applicable to the drawing of inferences from proven facts or circumstances by declaring:

> "From all the circumstances, especially in view of his failure to testify and explain the formation of this corporation or to deny his connection therewith, the reasonable inference is that Sinclair was one of the principals and shared in the profits of this transaction" (R. p. 845).

The Court of Appeals having drawn these inferences, which we maintain were, in the light of settled and funda-

mental principles, unlawful inferences, finally arrives at the conclusion that Sinclair was one of the principals in the Continental Trading Company and shared in the profits resulting to the Continental Trading Company from the purchase and resale of the Humphreys oils.

The Court of Appeals finally reached the result in its opinion that Sinclair was a shareholder in the Continental Trading Company, Limited. It reached this result solely from inferences upon inferences and from unrelated circumstances and in the face of established presumptions of law.

The Court of Appeals having inferred that Sinclair was a shareholder in the Continental Trading Company, Limited, proceeds to build upon this inference the whole structure of inferences upon which its opinion rests.

From the inference that he was a shareholder in the Continental Trading Company, Limited, the Court of Appeals infers that he received a dividend paid in Liberty Bonds.

The Court then proceeds, basing its opinion on what it characterizes as the evasions of Osler, and says:

> "In view of this testimony, evasive and noncommittal as it is, taken in connection with the statement in Osler's letter of August 9, 1923, to the Under Secretary of State at Ottawa, Ontario, that the Continental Trading Company, Ltd., had 'divided its assets ratably amongst its shareholders,' it is fair to assume that the warrant shareholders received dividends and assets in the form of Government bonds, as the bonds purchased constituted the only assets of the Company shown by the record" (R. p. 846).

This inference that the shareholders received the bonds as dividends is drawn from the circumstance that Osler had stated in his letter of August 9, 1923, to the Under Secretary of State at Ottawa that the Continental Trading Company, Ltd., had "divided its assets ratably amongst its shareholders." The Court ignores the fact that this letter of Osler to the Under Secretary of State at Ottawa was dated August 9, 1923, more than a year after certain bonds were found in the accounts of Everhart and Fall.

Resting upon a succession of double inferences, the Court of Appeals proceeds with the statement:

> "We then have a situation where an agency of Sinclair and others, the Continental Trading Company, Ltd., had as a part of its assets some of the very Liberty Bonds which soon after their acquisition by said agency appeared in the hands of Fall's son-in-law, and were deposited to Fall's credit in banks and used to liquidate his debts. There is no direct evidence to show how the bonds of the Continental Trading Company, Ltd., came into Everhart's possession" (R. p. 845).

The Court of Appeals here draws the further inference, based upon what might be called the fundamental inference, that the Continental Trading Company, Ltd., was an agency of Sinclair and others, because the Court has already inferred that Sinclair was a stockholder in the Continental Trading Company, Ltd., or otherwise interested in it. There is no evidence in the Record and no circumstance in the Record indicating that the Continental Trading Company, Ltd., was at any time or in any manner an agency of Sinclair's.

The Court of Appeals said, "There is no direct evidence to show how the bonds of the Continental Trading Company, Ltd., came into Everhart's possession" (R. p. 845). The truth is that the Record shows that there is neither direct, circumstantial nor any kind of evidence showing how the bonds came into the possession of Everhart.

Because Everhart, as the Court of Appeals phrases it, took refuge in a plea of self-incrimination, the Court again resting an inference upon an inference, which in turn rests upon another inference, finds:

> "* * *, the fact is sufficiently established that the bonds in the possession of Everhart and used in part for Secretary Fall's benefit were received by Everhart either from Sinclair or the Continental Trading Company, Ltd." (R. p. 846).

The Court then further finds that

> "That Company" (the Continental Trading Company, Ltd.) "we have pointed out, is shown to have been the agent of Sinclair, Blackmer, O'Neil and Stewart. Its assets consisted principally of Liberty Bonds. These assets were delivered to the shareholders, as Osler's letter shows" (R. p. 846).

No foundation for this statement can be found anywhere except in the succession of double inferences in which the Court has indulged to reach this conclusion. Again it must be pointed out that there is no evidence that the Continental Trading Company, Ltd., was in any sense or at any time or in any way the agent of Sinclair, or that he was a shareholder in it or otherwise interested in it. The evidence shows the Continental Trading Company, Ltd.,

continued in active business until June 1, 1923, and there is no evidence that any of its profits were distributed in dividends prior to that time. There is no evidence that its assets were delivered to its shareholders except the reference to the letter of August 9, 1923, more than a year after the bonds which are alleged to have been delivered as a bribe were found in the possession of Everhart and used for the benefit of Fall. There is no evidence that the assets which were distributed upon dissolution consisted of Liberty Bonds. The mere fact that the letter of August 9, 1923 stated that the assets of the Continental Trading Company had been "divided ratably among its shareholders" certainly affords no evidence that such division was in Liberty Bonds, nor does it afford any double inference that Sinclair was a stockholder and received any Liberty Bonds.

Thus far the Court of Appeals inferred Sinclair was a stockholder in the Continental Trading Company, Ltd., without any evidence, direct or circumstantial, on which to base such an inference. The Court of Appeals further inferred, resting upon the above primary inference, that the Continental Trading Company became in some way an agency of Sinclair's without any evidence, circumstantial or otherwise, on which to base such an inference. The Court of Appeals further infers, resting one inference upon another, that the Continental Trading Company, Ltd., distributed its assets, consisting of Liberty Bonds, to its shareholders and that Sinclair was one of the shareholders. In order to fasten the responsibility for the delivery of the bonds to Everhart upon Sinclair or his agency, the Court infers without any fact or circumstance upon which to rest the

inference, that the Liberty Bonds received by Everhart were received by him either from Sinclair or the Continental Trading Company, Ltd. There is not a scintilla of evidence from which an inference could be drawn to justify this finding of the Court. The Court arrives at this result by a succession of double inferences, starting with the primary inference that Sinclair was a stockholder in the Continental Trading Company, Ltd. These double inferences are drawn for the purpose of sustaining the conclusion of the Court that Sinclair, either directly or through an agency, to-wit, the Continental Trading Company, Ltd., through Everhart, Fall's son-in-law, delivered a bribe to Fall as a consideration for the granting of the lease of Teapot Dome. It will be recalled that the Court adopted the theory of the Government at the outset of the discussion of the subject of fraud, saying:

> "It is the theory of the Government, bluntly stated, that Secretary Fall received from Harry F. Sinclair, sole owner of appellee, Mammoth Oil Company, a pecuniary consideration which influenced him in granting to said Oil Company a lease of Naval Petroleum Reserve No. 3, commonly known as 'Teapot Dome'. Counsel for the United States charge in their brief that Mr. Sinclair received as dividends from the Continental Trading Company, Ltd., $230,500.00 face value of United States Liberty First 3½% Bonds, which he turned over to Secretary Fall in May, 1922, as a bribe" (R. p. 816).

Having adopted this from the Government's brief as a necessary and fundamental fact on which to rest the finding of fraud, justifying a cancellation of the lease, the Court of Appeals, starting with an inference not drawn from any

circumstance or fact in the case, that Sinclair was a shareholder in the Continental Trading Company, Ltd., bases upon that first inference a further inference that he received Liberty Bonds as a dividend from the Continental Trading Company, Ltd., and because Everhart claimed his constitutional privilege draws the further inference that he, Everhart, did not purchase the bonds and must have obtained them in some way other than by purchase, and because theretofore Sinclair had been negotiating for a lease on Naval Reserve No. 3 with Secretary Fall,—a lease which has been shown to be favorable to the Government and onerous to the lessee,—the Court infers that the lease was granted by Fall in consideration of a bribe to be paid to Fall by Sinclair; it infers that the bonds in Everhart's possession and subsequently in Fall's account were a bribe without any fact or circumstance upon which to rest the inference, and finally infers without any fact or circumstance upon which to rest the inference but by resting one inference upon another inference, that Sinclair himself or the Continental Trading Company, Ltd., as his agent, delivered these bonds in question to Everhart to accomplish the bribery of Fall. The language the Court of Appeals uses in this connection is:

> "The reasonable, proper and natural inferences and presumptions from the accrual of condemnatory incidents appearing in this record supply the so-called missing links in the testimony and satisfy us of Sinclair's connection with the Continental Trading Company, Ltd., and with the acquisition of the Government Liberty Bonds by Everhart and Secretary Fall" (R. p. 847).

And finally concludes:

> "Our conclusion is that the Government has sustained its claim that the lease and contract were procured by fraud and corruption, and that they should be cancelled" (R. p. 847).

We maintain that the inferences and presumptions to which the Court refers as the basis of its final conclusions are not reasonable, proper or natural and violate fundamental rules of law which we shall presently consider. It is incontestible that this conclusion rests upon a succession of double inferences, drawn from no fact or circumstance established in the evidence, and in part from inferences and presumptions drawn from wholly and totally unrelated incidents with which the Mammoth Oil Company or Sinclair are not shown to have had even the remotest connection.

Let us enumerate the inferences on which this final conclusion of the Court of Appeals solely rests:

> (a) It is inferred that Sinclair was a shareholder in the Continental Trading Company, Ltd., or otherwise interested in it without any fact or circumstance proven from which such an inference could properly be drawn. Upon this first inference, it is further inferred
>
> (b) It is inferred that the Continental Trading Company, Ltd., paid a dividend in or prior to May, 1922, and that it paid such dividend in Liberty Bonds, without any fact or circumstance proven from which an inference could properly be drawn that it paid a dividend either in Liberty Bonds or otherwise.

(c) That Sinclair received as a shareholder in the Continental Trading Company, Ltd., dividends in Liberty Bonds, without any circumstance or fact proven from which such an inference could properly be drawn. Upon this third inference it further infers, without any circumstance or fact upon which to rest the inference,

(d) That Sinclair received $230,500 in United States First Liberty Loan 3½ Per Cent. Bonds, out of a total of $300,000 of such bonds, in the face of the repeated assertion by the Court that Blackmer, O'Neil, Sinclair, Stewart and Osler were the persons interested in and shareholders of the Continental Trading Company, Limited.

These inferences, pyramided one upon another, are the inferences which the Court of Appeals draws without proven facts or circumstances to establish Sinclair's interest in the Continental Trading Company, Limited, and his connection with or receipt of Liberty Bonds as dividends.

The Court of Appeals then turns to that portion of the Record which deals with the affairs of Everhart and Fall in New Mexico and Colorado. The first inference which the Court draws with respect to the facts concerning Everhart and Fall is

(e) That Everhart did not purchase these bonds and did not come into the possession of them honestly, because he claimed his constitutional privilege against self-incrimination. This inference has no fact or circumstance in the Record upon which to rest but rests solely upon the principle enunciated by the Court of

Appeals that no honest man ever claims the constitutional privilege.

(f) The Court of Appeals further infers that, as Everhart claimed his constitutional privilege and could not have purchased the bonds, and that as these bonds or a large part of them were claimed to have been identified by their serial numbers as bonds which had been purchased by the Continental Trading Company, Ltd., through the branch of the Dominion Bank of Canada in New York, Everhart must have received the bonds from Sinclair or the Continental Trading Company, Limited, as his agents. It will be observed that this inference not only rests upon another inference that Everhart could not have purchased the bonds, but also rests upon this series of inferences heretofore referred to:

(1) That Sinclair was a shareholder in the Continental Trading Company, Limited;

(2) That he received dividends in bonds from the Continental Trading Company, Limited; and

(3) That as early as May, 1922 he received $230,500 of bonds out of a total of $300,000 purchased by the Continental Trading Co., Limited, prior to that date.

Resting upon this succession of double inferences, the Court further infers,

(g) That these bonds were delivered to Everhart by Sinclair or the Continental Trading Company, Ltd., as his agency, and that Everhart received these bonds for the purpose of delivering them to Fall as a

bribe, without any fact or circumstance in the Record upon which to rest such an inference.

The Court of Appeals further infers, without any fact or circumstance upon which to rest the inference.

(h) That this bribe was paid to Fall as a consideration for his granting or aiding in the grant of the lease upon Naval Petroleum Reserve No. 3.

The Court of Appeals further infers, resting upon a bewildering succession of double inferences, that as Sinclair had negotiated the lease in part with Secretary Fall for the Naval Petroleum Reserve No. 3, that he was the only one of those present at the execution of the contract between Continental Trading Company, Ltd., and Humphreys who could have had any motive to bribe Fall and that therefore he was the person who paid the bribe through Everhart to Fall.

It will be observed that the Court of Appeals ordered the cancellation of this lease because of the bribery of Fall by Sinclair and the consequent perpetration of a fraud upon the Government. The finding of bribery and fraud, we maintain, is without any evidence in the Record to support it. The result arrived at by the Court of Appeals rests on inferences, which in turn rest upon other inferences, none of which can legitimately be drawn from any established fact or circumstance in the case.

The presumptions indulged in by the Court violate the principles of law applicable to presumptions.

A final and complete analysis of the opinion of the Court of Appeals leaves us with nothing but questions of law to consider.

Principles of Law Involved.

Proof of Fraud Must Be Clear, Unequivocal and Convincing—Fraud Cannot Be Presumed.

The rule in the Federal courts has long been well-settled that fraud is not to be presumed; that it is not to be presumed from any number of lawful acts; that where an act and circumstance are as consistent with an honest motive as with a dishonest one, the former must be preferred; that fraud cannot be proved by a bare preponderance of the evidence, but only by evidence that is clear, unequivocal and convincing.

Conard v. *Nicoll*, 4 Pet. 291;
U. S. v. *Arredondo*, 6 Pet. 691;
Clarke v. *White*, 12 Peters, 178, 196;
Kessler & Co. v. *Ensley Co.*, 141 Fed. 130, 137;
Jones v. *Simpson*, 116 U. S. 609, 615;
United States v. *Maxwell Land Grant Company*, 121 U. S. 325, 381;
United States v. *Hancock*, 133 U. S. 193, 197;
Foster v. *McAlester* (C. C. A. 8), 114 Fed. 145, 152;
The Atlantic Delaine Company v. *James*, 94 U. S. 207;
United States v. *Des Moines Navigation & Railway Company*, 142 U. S. 510;
U. S. v. *Budd*, 144 U. S. 154;
U. S. v. *American Bell Telephone Company*, 167 U. S. 224;
United States v. *Stinson*, 197 U. S. 200;

United States v. *Clark*, 200 U. S. 601;
Mastin v. *Noble* (C. C. A. 8), 157 Fed. 506;
Wilson v. *Sands* (C. C. A. 8), 231 Fed. 921;
Folk v. *United States* (C. C. A. 8), 233 Fed. 177;
U. S. v. *King* (C. C. A. 9), 83 Fed. 188;
United States v. *Wildcat*, 244 U. S. 111.

There are certain well-settled rules of law that guide the courts in the determination of this question. If the circumstances proven are just as consistent with honesty and good faith as with fraudulent intent, the inference of fraud is unwarranted. Fraud cannot be established by circumstantial evidence unless it is the only conclusion that can fairly and reasonably be drawn.

U. S. Fid. & Guar. Co. v. *Des Moines Nat. Bank*, 145 Fed. 273; 74 C. C. A. 553.

Proofs which only create a suspicion are not sufficient to warrant a finding of fraud. *U. S.* v. *Hancock*, 133 U. S.; 10 Sup. Ct. 264; 33 L. Ed. 601.

A mere preponderance of evidence which at the same time is vague or ambiguous is not sufficient to warrant a finding of fraud. *Lalone* v. *United States*, 164 U. S. 255; 17 Sup. Ct. 74; 41 L. Ed. 425.

In a civil action, where fraud and bribery are charged, the presumption of innocence applies with the same force and effect as it does in a criminal case, and that presumption of innocence outweighs all other presumptions and inferences until it is overcome by clear and convincing evidence. *Jones Law of Evidence* (2d ed.), 1908, Sec. 13.

The Rules as to Inferences.

No inference of fact or of law is reliably drawn from premises which are uncertain; nor can legitimate inferences be drawn from other inferences nor presumptions indulged which rest upon the basis of another presumption. The law requires an open, visible connection between the principal fundamental facts and the deductions from them and does not permit decisions to be made on remote inferences. A presumption is not a circumstance in proof and it cannot therefore be made the legitimate foundation for another presumption. There is no open and visible connection between the fact out of which the first presumption arises and the fact which is sought to be established by the dependent presumption.

U. S. v. *Ross*, 92 U. S. 281; 23 L. Ed. 707;
Manning v. *Insurance Co.*, 100 U. S. 693; 25 L. Ed.
Looney v. *Metropolitan Street Ry. Co.*, 200 U. S. 480; 26 Sup. Ct. 303; 50 L. Ed. 564;
U. S. Fidelity & Guaranty Co. v. *Des Moines Natl. Bank*, 145 Fed. 273; 74 C. C. A. 553;
Vernon v. *United States*, 146 Fed. 121, 125;
Postal Telegraph-Cable Co. v. *Livermore & Knight Co.*, 188 Fed. 696, 699;
Cunard Steamship Co. v. *Kelley*, 126 Fed. 610, 615;
Davis v. *United States*, 18 App. (D. C.), 468, 495.

The Court of Appeals in effect drew inferences adverse to the Mammoth Oil Company because of the declination of

Blackmer and O'Neil to testify, and the failure of petitioners to call Fall as a witness, and because Osler and Everhart asserted their respective privileges. These circumstances were used by the Court of Appeals in reaching the conclusion of fraud against the petitioner, Mammoth Oil Company, and as a source of unrelated inferences. The rule is: No unfavorable presumption arises from the failure to produce evidence if it is not within the control of the one who fails to produce it, nor from the failure to call as a witness one whom the other party had the same opportunity of calling, nor if the testimony not given is privileged.

Jones Law of Evidence (Ed. 2, 1908), Sec. 21;
State v. *Buckman*, 74 Vt. 309; 52 Atl. 427;
Cross v. *Lake Shore Ry.*, 69 Mich. 363;
First National Bank v. *Hyland*, 6 N. Y. S. 87; 53 Hun 108.
Erie R. R. v. *Kane*, 118 Fed. 223, 238.
Scovill v. *Baldwin*, 27 Conn. 316;
Bleeker v. *Johnston*, 69 New York 309-313;
Arbuckle v. *Templeton*, 65 Vt. 205;
Crawford v. *State*, 112 Ala. 1;

Improper Inferences Drawn From Failure of Mr. Sinclair to Testify.

The Court of Appeals, speaking through Judge Kenyon, said:

> "Of course, a plaintiff in a case cannot insist that the defendant must furnish evidence he may have or permit plaintiff to succeed, and there must be affirmative proof of facts prima facie at least

to sustain plaintiff's contentions, before inferences can be properly drawn. The language used by some courts is that there must be something laid at defendant's door. As before indicated, we are of the opinion that that situation existed here" (R. p. 844).

Again the Court said:

> "With important and controlling facts in Sinclair's possession, and with a train of circumstances that aroused the gravest suspicion as to corruption practiced in securing the lease laid at his door, his failure to testify is a matter of deep significance. There is a presumption in the law that if a litigant have facts within his knowledge and refuses to reveal them, it is presumed that if revealed they would be against him. The silence of one who should speak may well create an inference adverse to him" (R. p. 843).

We submit that the true principle is that the mere silence of a party will not supply lacking affirmative proof against him, but may be considered in weighing proofs already adduced tending to fix a liability upon him in matters where complete and more or less exclusive knowledge of the facts concerning which he is silent is laid at his door. Where there is a total lack of evidence tending to show guilt, mere silence of the party proceeded against cannot be the basis of a presumption of guilt. *W. F. Corbin Co.* v. *United States*, (C. C. A. 6) 181 Fed. 296.

> *Owens Bottle Mach. Co.* v. *Kanawha Banking & Trust Co.* (C. C. A. 4) 259 Fed. 838; 842;
> *Omar Oil & Gas Co.* v. *Bair Oil Co.*, 285 Fed. 588;
> *Stimpson* v. *Hunter*, 234 Mass. 61;

Shotwell v. *Dixon*, 136 N. Y. 43;
Loper v. *Askin*, 178 App. Div. (N. Y.), 163, 164;
Texas & Pacific Ry. Co. v. *Shoemaker*, 98 Texas 451;
Blackman v. *Andrews*, 150 Mich. 322, 114 N. W. 218;
Chicago Mill & Lumber Co. v. *Cooper*, 90 Ark. 326; 119 S. W. 672;
Thompson v. *Daviltte*, 59 Ga. 472;
Lowe v. *Massey*, 62 Ill. 47;
City of New Orleans v. *Gauthreaux*, 32 La. Ann. 1126.

Specification of Error No. 3.

We submit that the Court of Appeals erred in holding that certain entries and records of banks and brokers and other private persons entire strangers to the cause, made in the the absence of your petitioners or any of them or any of their representatives, to which none of your petitioners nor anyone representing any of them were parties, set forth at pages 18, 19 and 20 of the petition, were competent evidence against your petitioners.

The District Court considered the case as though all this evidence were competent and found for your petitioners with that evidence in the scale, but passing upon the objection formally in its opinion and for the purpose of making the record, said:

> "The motion has as its basis two grounds, first, that all of this evidence is inadmissible because falling within the rule that such records are *res inter alios acta*; and second, that much of this evidence

was objectionable for the reason that it was additionally of a hearsay character because the parties who purported to testify to it had no personal knowledge of the books, and records themselves. The court considered this question upon the trial and made a tentative ruling, citing some authorities expressing views upon the subject. While the first question has not been passed upon in late years in our Circuit, the case of Board of Commissioners v. Keene, 108 Fed. 365, seems to recognize the doctrine contended for by defendants and therefore for the purpose of making the record so that the Appellate Court may pass upon it if it may be so advised, the motion to strike will be sustained upon this first ground" (R. p. 279).

The Court of Appeals considered and weighed these records and entries as competent evidence of facts and circumstances from which it drew its inference of fraud. Speaking through Judge Kenyon, the Court said:

> "The Court based its action in sustaining the motion to strike on the ground that the rule '*res inter alios acta*' applied to and governed the situation. The ruling would seem to be entirely unimportant, for the reason that if this evidence, conceding it to be admissible in connection with the other evidence in the case, was insufficient to sustain the charge of fraud, then the question of whether it was properly admitted, was of no consequence. If, however, the transactions as to the purchase of the Government Liberty bonds was a part of or resulted from a conspiracy between Fall and Sinclair to corruptly bring about the execution of the lease they were and matters between strangers and the evidence relating

thereto would not be subject to the rule of '*res inter alios acta*' " (R. p. 849).

With due respect to the Court of Appeals, we submit that it seems to have failed to understand the character of the objection made. The entries in these books were written down by strangers to this record in transactions to which the parties here are strangers. The books and records were *res inter alios acta*. Written hearsay is not more competent than spoken hearsay.

Board of Commissioners v. *Keene Five Cent Savings Bank* (C. C. A. 8), 108 Fed. 505, 510;

Union Pacific Ry. Co. v. *Perrine* (C. C. A. 8), 267 Fed. 657, 659;

Crowell Bros. v. *Panhandle Grain & Elevator Co.* (C. C. A. 8), 271 Fed. 129, 135;

Kerbaugh v. *Gray* (C. C. A. 2), 212 Fed. 716;

Minton v. *Underwood Lumber Co.*, 79 Wis. 646, 648;

Barnes v. *Simmons*, 27 Ill. 511, 512.

Specification of Error No. 4.

In connection with the question as to whether the Court of Appeals construed the Act of June 4, 1920 correctly in holding that the discretion to determine whether it was necessary to take the oil from the ground was lodged with the Secretary of the Navy, instead of holding that the Congress by the terms of the Act determined that he must take the oil from the ground in order to conserve it, the Court of Appeals, speaking through Judge Kenyon, said:

"Counsel for appellees argue that the language of this Act compels the Secretary of the Navy to employ all of the methods suggested, and that the term 'in his discretion' applies to the method by which he shall 'conserve, develop, use and operate.' We do not agree with this view. It is apparent that, although the conjunction 'and' is used, *Congress intended that the Secretary should employ any or all of these methods as his discretion should dictate. Certainly if the oil can be properly conserved in the ground the Secretary of the Navy is not under compulsion to develop the properties. What he does must be for the benefit of the United States. That is the limitation of his discretion. If he shall determine that the oil cannot be properly conserved within the ground, then he has the right to develop, use and operate the properties directly or by contract, lease or otherwise. Having decided in the exercise of a wise discretion that it is for the interest of the Navy, and therefore of the United States, to develop and operate the properties, he may do this directly, which will require the expenditure of money, or he may do it by contract or by lease*" (Italics ours). (R. p. 812).

Our contention was and is that the Act of June 4, 1920, speaks for itself upon this question. It provides "that the Secretary of the Navy is *directed* to take possession of *all* properties within the Naval Petroleum Reserves * * *; to conserve, develop, use and operate *the same*"; that is to say, "*all* properties" (Italics supplied). The word used by the statute is not "authorized". It is not a merely permissive word. It is the imperative word "directed". It is a *command*. Moreover the command is to "conserve, develop, use *and* operate." It is not in the disjunctive.

The Secretary of the Navy is to do all four of these things with no thought that he is to do one or another of them. The words "develop, use and operate" mean the same thing. That is, to drill wells to the oil and proceed to extract the oil. The word "conserve" means to preserve from loss, to defend from violation, to preserve from waste. Coupled in the conjunctive with the other words of the statute, as it is, under the doctrine of *noscitur a sociis*, it means in this statute to preserve from loss by developing, using and operating. The four words contain a single thought and this not permissive but commanded. That single thought is expressed in all the ways it could have been expressed and is coupled with the word "directed".

Specification of Error No. 5.

Under the decree of the Court of Appeals, the Mammoth Oil Company is required to account for all oil removed from Naval Petroleum Reserve No. 3 without credit for the value of the things received by the United States under the contracts, to wit, storage facilities constructed at Portsmouth, New Hampshire, at a cost in excess of $1,000,000 (R. p. 717). We submit that such credit should be allowed under the rule that he who seeks equity must do equity and he who would rescind a contract for any cause may not at the same time retain fruits of the contract without compensation.

Neblett v. *Macfarland*, 92 U. S. 101;
Stoffela v. *Nugent*, 217 U. S. 499;
Story Eq. Jur. 14 Ed., Sec. 957.

Specifications of Error Nos. 6, 7, 8, 9.

The Court of Appeals, disposing of the question affecting the Sinclair Pipe Line Company and the Sinclair Crude Oil Purchasing Company, said:

> "As our conclusion is that the lease and contract were procured through fraud and corruption, each of the appellees is a mala fide trespasser on the Government lands, and therefore no credit for expenditures can be allowed any of them by the Court" (R. p. 851).

As to Sinclair Pipe Line Company.

It will be noted from the brief statement set forth in the petition for certiorari submitted herewith, that the Court of Appeals decided that the pipe line company is a *mala fide* trespasser on Government land and the basis for this conclusion appears to be one of two alternatives; first: that H. F. Sinclair is or was Chairman of the Board of Directors of Sinclair Consolidated Oil Corporation and *probably* its largest stockholder and that Sinclair Consolidated Oil Corporation owns one-half of the capital stock of Sinclair Pipe Line Company, or, second: that because the Court finds that the lease contract of April 7, 1922, was procured for Mammoth Oil Company by Mr. Sinclair through fraud, that such finding renders such lease contract void *ab initio* and no third person or corporation could obtain any rights or equities therein or flowing therefrom even though they acquired such rights without notice and expended money in good faith relying upon the validity of such lease contract.

With reference to the first proposition—it is not contended or in any way shown by the record that Mr. Sinclair was in any way in control of Sinclair Pipe Line Company, other than he was the chief executive officer of a corporation owning one-half of the capital stock of such pipe line company; we realize that knowledge of an officer of a corporation is often imputed to the corporation of which he is an officer, but that knowledge of a fraud committed by a stockholder of a corporation, owning only one-half of the stock of another corporation, is to be imputed to such other corporation, is an entirely different proposition.

Upon the second proposition the Court of Appeals found that the contract of assignment and nomination which was executed on behalf of the United States by the Secretary of the Interior and the Secretary of the Navy in December, 1922, was executed prior to any attempt on behalf of the Government to rescind the lease contract of April 7, 1922 (R. p. 850). It is the general rule that fraud does not render the contract void *ab initio* but only voidable, and that it is valid until rescinded, or an attempt is made to rescind it by the party alleging the fraud; it is clear that any rights or equities in favor of the pipe line company accrued to it while such contract was in full force and effect and before any attempt had been made to rescind it by the Government, and that the pipe line company constructed its pump station and pipe line upon the Reserve in reliance upon its rights so to do under its contract of December, 1922; there was no evidence offered and no contention made by the representatives of the Government, that such contract of December, 1922, was procured by the pipe line company as the result of any fraud or misrepresentation practiced upon the

Cabinet Officers representing the Government in the execution thereof.

The Court of Appeals apparently overlooked the fact that this company was not asking or seeking any accounting for the value or cost of its pump station and main pipe line placed by it upon the Naval Reserve, but was only asserting that by virtue of the facts and the contract of December, 1922, it was entitled to maintain its property and pump station upon the Naval Reserve. It was shown that the pipe line company had expended in excess of $700,000 in constructing its pump station, equipment connected and operated therewith and the portion of its main pipe line system across and upon the Reserve (R. 739), and that such pump station and line was a part of its main line system and used for the transportation of oil as a common carrier in Interstate Commerce, and therefore subject to the jurisdiction and control of the Interstate Commerce Commission by virtue of the laws of the United States governing common carrier pipe lines.

It is our contention that the Court of Appeals, even though it found that the lease contract of April 7, 1922, was voidable on account of fraud and corruption in securing the execution of the same, nevertheless the facts herein set forth with reference to the pipe line company do not render it a trespasser *mala fide;* that in fact it was not a trespasser in any respect but was entitled to remain in possession of the surface used by it for its pump station and pipe line system by reason of the fact that it was accepted by the United States, acting by the Secretary of the Navy and the Secretary of the Interior, as the assignee of the Mammoth Oil Company of the right of way or ease-

ment theretofore granted Mammoth Oil Company; and that such acceptance by the United States of this company as such assignee, there being no contention that such acceptance was procured by any fraud or corruption, constituted a new and independent grant of an easement or right of way to Sinclair Pipe Line Company independent of Mammoth Oil Company.

Even though we be in error in the foregoing contention, we maintain that under the peculiar facts and circumstances of this case, even though it be held that the pipe line company is a trespasser because in possession of Government land without proper authority to occupy the surface thereof, the injunction granted by a Court of Equity to stop further trespass and retention of possession should be in the alternative, and not become finally effective until a reasonable time has been given the common carrier to procure from the proper Governmental authorities a right of way or easement to use such surface upon proper payment therefor, or, failing so to do, that it be required to remove from the Government land the property it has in good faith placed thereon believing it had a legal right to do so.

This Court has had occasion to consider a somewhat similar contention and in the case of *Utah Power & Light Company* v. *United States*, 243 U. S. 389, 61 L. Ed. 791, at page 403, stated the object of a suit of this kind to be as follows:

> "The principal object of the suits, as is said in one of the briefs, is to test the validity of these asserted rights, and, if they be found invalid, to require the defendants to conform to the legislation of Congress, or, at their option, to remove from the Government lands."

That case involved the right of a power and light company and this Court found that it was a trespasser upon Government land because it was occupying the surface thereof without legal right so to do, and yet there was no attempt to enjoin such further trespass so as to confiscate property placed on Government land without legal rights to do so.

In *Chicago, Milwaukee & St. Paul Railway Co.* v. *United States*, 244 U. S. 351, 61 L. Ed. 1184, this Court said (p. 359):

> "The decree unconditionally commands the execution and filing of the prescribed stipulation without awarding an alternative injunction and counsel for the Government suggests that it should have enjoined the company from the further occupation of the Reserve, unless, within a prescribed time, the stipulation be executed and filed. The criticism is not without merit, and doubtless is prompted by a careful study of the bill. But, as the Government has not appealed and the company is not complaining of the failure to put the matter in the alternative, the point may be passed without further notice."

We are here complaining of the failure of the Court of Appeals to direct the Trial Court to issue the injunction—if it is to be finally issued—in the alternative, and we contend that the injunction ordered by the Court of Appeals should have been in the alternative, to wit, that unless within a time to be fixed by the Trial Court the pipe line company should procure authority from the proper officials representing the United States to occupy the surface of the Naval Reserve with its pump station, equipment and pipe line, or failing so to do, to remove its property placed on Government land without right, that then and only then

should it be enjoined from further trespass or occupation of the Government lands, being Naval Reserve No. 3.

The effect of the injunction as ordered by the Court of Appeals without any alternative therein, will be that this common carrier pipe line in possession of a portion of the Reserve is enjoined from further use, possession or trespass; if it goes upon the land after such injunction is issued to remove its property placed thereon, it will be in contempt of the Court issuing such injunction and the pipe line system will not only cease to operate as a public carrier but will forfeit property for which it invested in excess of $700,000 and such property will be confiscated by the United States, merely because it constructed its pump station and main line upon Government land believing it had the right to do so.

As to Sinclair Crude Oil Purchasing Company.

The record discloses, as found by the Court of Appeals, that Sinclair Crude Oil Purchasing Company as the vendee or assignee of Mammoth Oil Company purchased seventeen (17) steel oil storage tanks on Naval Reserve Number 3 (R. p. 850), and became substituted as to the rights of the Mammoth Oil Company to maintain the same before any attempt was made or action taken to rescind the lease contract of April 7, 1922; while the Court of Appeals finds that Sinclair Crude Oil Purchasing Company was evidently controlled by Mr. Sinclair, there is no evidence in the record to justify such inference or assumption of control as the record shows that the stock of the Sinclair Crude Oil Purchasing Company was owned one-half by the Standard Oil Company of Indiana and one-half by Sinclair Consolidated Oil Corporation and the same ruling is made with reference to the right of Sinclair Crude Oil Purchasing Company to have an ac-

counting against the Government for the value of the tanks so purchased by it, although no contention was made in either Court that it would be entitled to any such accounting.

While this corporation is not a common carrier, we contend that the injunction ordered by the Court of Appeals to be granted by the Trial Court, even if an injunction were proper to be ordered, should also have been in the alternative so that such corporation would be given a reasonable time to cease trespassing upon Government land by removing the property it had purchased and constructed thereon in good faith, even though the Court finds it was a trespasser in so doing.

Conclusion.

We submit that a Writ of Certiorari should be granted, as prayed, upon the grounds stated in the petition.

Respectfully submitted,

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GEORGE P. HOOVER,
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Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. 719

MAMMOTH OIL COMPANY, *et al.*,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MEMORANDUM BRIEF OF PETITIONER MAMMOTH OIL COMPANY IN REPLY TO THE BRIEF OF THE UNITED STATES

JOHN W. LACEY,
MARTIN W. LITTLETON,
GEORGE P. HOOVER,
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IN THE

Supreme Court of the United States

October Term, 1926.

No. 719.

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY and SINCLAIR PIPE LINE COMPANY, Petitioners, vs. THE UNITED STATES OF AMERICA, Respondent.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

MEMORANDUM BRIEF OF PETITIONER MAMMOTH OIL COMPANY IN REPLY TO THE BRIEF OF THE UNITED STATES.

Introductory Statement.

As indicated in their preliminary statement of the case, Counsel for the Government seek in their brief to establish two propositions, (1) that the Court of Appeals found the lease and contract here in controversy fraudulent irrespective of the finding of bribery and (2) that the decision of this Court in the *Pan American* case is decisive of the issues here.

The four main heads of the Government's argument are:

> "B. Appellee's Statement of the Facts" (brief, pp. 26-61).
>
> "C. The Fraudulent Character of the Lease and Contract" (brief, pp. 61-134).
>
> "D. The Legal Sufficiency of the Proofs of Fraud and Conspiracy" (brief, pp. 134-173).
>
> "E. The Illegality of the Lease and Contract" (brief, pp. 173-212).

Counsel for the Government frankly place their statement of the facts under the heading of argument. Their statement of the facts gives an entirely incorrect view of the evidence and therefore, if accepted as the correct view, would lead to an entirely erroneous conclusion by the Court. Moreover, innuendo is woven into the evidence, sequence of events is changed and diverted and the evidence of the Government's own witnesses as well as witnesses called by defendants, is criticized and wherever unfavorable to the Government rejected and conjectures are substituted for such evidence. Owing to the shortness of the time and the necessity for brevity, we shall not attempt to review the Government's statement of the facts but will at the end of this memorandum point out examples of such erroneous and misleading views of the evidence.

Moreover, we shall not notice in detail the matters stated from pages 61 to 134 under the heading of "The Fraudulent Character of the Lease and Contract" as we do not desire to repeat what we have said in our main brief and as such matters may be sufficiently noticed for

our present purposes under Government Counsel's next heading, "The Legal Sufficiency of the Proofs of Fraud and Conspiracy."

The So-called "Badges of Fraud and Conspiracy".

Under this heading Counsel at pages 134 to 136 of their brief list fifteen alleged "badges of fraud and conspiracy" which summarize their argument that the lease and contract here were fraudulent. The so-called "badges of fraud and conspiracy" are stated as follows:

> "1. The policy of conserving the oil in the ground as long as possible, and of making only protective leases for offset purposes, was changed to one of exploiting the whole Reserve.
>
> "2. The policy of leasing only pursuant to advertisement and competitive bidding was changed to private negotiation.
>
> "3. In the private negotiations with Sinclair, competition for the lease, for the purchase of the royalty oil and for the erection of storage tankage was eliminated.
>
> "4. The quit-claiming of placer claims known to be invalid was made a condition precedent to a lease, and only Sinclair was given any practicable opportunity to secure the claims.
>
> "5. Applicants other than Sinclair for leases were told no leasing was contemplated or, as in the case of Beaty and Helms, were not given information on which a comparable bid could be made or time in which to make a bid.
>
> "6. Newspapers, the general public, senators and congressmen were denied information and affirmatively misled to avoid competition and opposition to the plan.

"7. Negotiations were so shrouded with secrecy that even departmental subordinates did not know what was being done and did not know of the change in policy.

"8. Subleases were clandestinely promised to two persons desirous of territory in the reserve.

"9. The possibility of drainage was exaggerated and used as a justification for the lease, but not in good faith.

"10. After doubts as to the legality of the plan were expressed by eminent attorneys, submission of the question to the Attorney General or Solicitor for the Interior Department was studiously avoided.

"11. The lease was drafted in secrecy in the office of Sinclair's attorney.

"12. Fall dominated the negotiations leading up to the making of the lease.

"13. Sinclair bribed Fall with $230,000 worth of Liberty Bonds.

"14. Neither Sinclair nor Fall were called by appellants to testify. Everhart claimed privilege against self incrimination. Other witnesses with knowledge of important facts refused to testify.

"15. Sinclair got a lease estimated to be worth in profits to his company over $33,000,000."

As we have pointed out at page 10 of our main brief this Court has held that the words "fraud" and "conspiracy" no matter how often repeated or charged cannot make a case for the interference of a court of equity until connected with some specific acts for which one person is in law responsible to another. They are merely words of unpleasant signification,—meaningless, unless

coupled with acts resulting in injury or damage to the plaintiff. Counsel in their brief have again and again used the word "fraud" in connection with certain matters without pointing out wherein the matters are fraudulent. But on page 138 of their brief they make a general statement which seems to indicate what they are talking about when they say "fraud". They say:

> "The particular type of fraud with which we are concerned in the present case is collusion between an agent and a third party dealing with that agent. *The fraud consists of improper motives upon which the third party induces the agent to act* and as a result of which the agent does act in whole or in part." (Italics ours.)

In other words, they here charge actual, intentional fraud and dishonesty of purpose. In the light of the position so announced by Counsel, let us consider briefly the so-called badges of fraud and conspiracy. We shall not take time to discuss each of them separately but our position may be illustrated by reference to a few of them.

The first so-called badge consists of a charge that the policy of conserving the oil in the ground was changed to one of exploiting the whole reserve. That, of course, begs the issue. We have shown from the evidence and both the lower Courts have found from the evidence, that the lease here in controversy was made as a protective measure to save the Navy's petroleum in Teapot Dome. If this Court finds that the action of the Secretary of the Navy in making the lease for that purpose was a capricious exercise of discretion wholly unsup-

ported by any evidence which would justify it, then the lease and contract will be held unlawful. But is there any evidence that the parties here intended to make a lease which they knew to be unlawful? Did they knowingly and intentionally set about to make a lease which they knew was in violation of the law or injurious to the Government? We assert that there is no such evidence and that the lease may not be held to be fraudulent upon any finding that it was not authorized by law.

Similarly, other alleged badges of fraud relating to the question of advertisement and competitive bidding beg the question. It is a question of law here whether advertisement and competitive bidding were required in the making of this lease. If this Court holds that advertisement and competitive bidding were required, then the lease may be held unlawful, not upon the ground of fraud but because of illegality. There is no evidence and could have been no evidence that either the Government officials or Sinclair knew that competitive bidding was required. To make a mistake of law is one thing; to intentionally violate the law with an improper motive is quite another.

Others of the so-called badges of fraud relate to the alleged secrecy. It is not shown that secrecy to the extent that it was observed in the making of the lease was unlawful; it is not shown that such secrecy resulted in any damage or injury to the United States; it is not shown that the Mammoth Oil Company or Sinclair had anything to do with the secrecy or had any knowledge of it. How, therefore, could the Mammoth Oil Company or Sinclair have been guilty of fraud in respect of secrecy

in the sense that Counsel here say they are using the word fraud?

Indeed Sinclair is not shown to have had any knowledge of most of the matters in respect of which Counsel for the Government raise the cry "badges of fraud". He was not responsible for the making of the removal of the cloud in the Government's title to Teapot Dome a condition precedent to a lease. He was not responsible and had no knowledge of any alleged exclusion of other bidders. He had nothing to do with the question of whether or not the Attorney General should be consulted in reference to the lease. Is it not clear when Counsel say "the fraud consists of improper motives upon which the third party induces the agent to act" that they mean that the fraud consists of bribery? How is it claimed that Sinclair induced Secretary Fall to act on improper motives? The answer is found in the charge contained in the 13th alleged badge of fraud, namely "That Sinclair bribed Fall with $230,500 worth of Liberty Bonds."

The Court of Appeals recognized the situation. It found that Secretary Denby did not, under the facts as to drainage submitted to him, act arbitrarily or capriciously or abuse his discretion in determining to lease Teapot Dome. It found as to the manner of leasing, that no general statute of the United States had been violated. It found, impliedly at least, that the United States was in no way injured or damaged through the making of the lease. Finally, it recognized that the only question of fraud in the case was whether Secretary Fall received a pecuniary favor from Mr. Sinclair and it predicated its finding of fraud solely upon that issue of bribery.

At pages 8-12 of their brief, Counsel say that the Court of Appeals held that there was some vague sort of fraud in this case outside of the question of bribery. They say:

> "All of the other elements of fraud were examined by the court and commented upon by the court before it took up the evidence as to bribery. And the evidence as to bribery is treated as but one element or item in the many significant transactions which spell favoritism, secrecy and fraud" (Brief pp. 11-12).

What is the fact of the matter? The Court of Appeals begins its discussion of the question of fraud at page 816 of this record. After stating that there is no charge of corruption in the case as to any officer of the Government except Secretary Fall, after stating the theory of the Government that Mr. Sinclair bribed Secretary Fall, and after saying "If a Government official, engaged in making contracts for the Government, *receives a pecuniary favor* from one with whom such contracts are made, a fraud is committed on the Government" (R. 817), it states at the bottom of page 818 that it will proceed, therefore, to a somewhat extended examination of the record and sift from the mass of evidence the important and relevant parts. It then proceeds through pages 819 to 847 to review the Continental Trading Company matter and all other matters which presumably it considered important and relevant on the question of fraud. Included therein were all the matters listed by Counsel in their brief as "badges of fraud" except the first one. At the conclusion of its review the Court of Appeals says:

> "Is a court to say that because none testified as to the actual transfer of the bonds that a fatal missing link in the evidence exists? We conclude not. The reasonable, proper and natural inferences and presumptions from the accrual of condemnatory incidents appearing in this record supply the so-called missing links in the testimony and satisfy us of Sinclair's connection with the Continental Trading Company, Ltd., and with the acquisition of the Government Liberty Bonds by Everhart and Secretary Fall" (R. 847).

In other words the finding of fraud made by the Court of Appeals was that Sinclair delivered Liberty Bonds to Secretary Fall and conceding that there were missing links in the testimony that Mr. Sinclair delivered any bonds to Secretary Fall, the Court said that the inferences which it drew from the "condemnatory incidents appearing in this record" supplied the missing links which it has just said existed because no one testified as to the actual transfer of the bonds and satisfied it (of what?) "of Sinclair's connection with the Continental Trading Company, Ltd., and with the acquisition of the Government Liberty Bonds by Everhart and Secretary Fall."

What did the court mean by "condemnatory incidents"? The only natural and reasonable inference is that it meant the incidents which it stated at the outset of its discussion of fraud it would review and which as a matter of fact it did consider and discuss. The incidents so considered and discussed include all of the matters referred to by Counsel for the Government as "badges of fraud and conspiracy" except the first one listed by Counsel. As to the matter covered by that one the Court

of Appeals found that the facts in evidence authorized the lease.

As we demonstrated in our main brief, the Court of Appeals simply drew inferences from other matters in no way related to Liberty Bonds as a further basis for the two final inferences which it drew that Mr. Sinclair was connected with the Continental Trading Company, Ltd., and with the acquisition of Government Liberty Bonds by Fall.

The Argument as to the Sufficiency of the Proof of Fraud.

After setting forth their fifteen "badges of fraud and conspiracy", Counsel in effect recognize that bribery is the issue in that not only the statements of principles which they make under their next sub heading of "The Test of the Sufficiency of the Proof of Fraud" relate to bribery, but also the cases they cite thereunder are all cases involving bribery of a public official. We dispute neither the principles nor the authorities and we assert that neither have any application to the case at bar.

At page 137 Counsel say, "If Sinclair knew or reasonably suspected that in awarding the contract to his company, Fall was actuated by any motives other than the procurement of the greatest advantage to the United States and the giving of equal opportunity to every would-be contractor, the resulting contract is fraudulent and unenforceable." Is there anything in the record to show that Fall was actuated by any motive other than the procurement of the greatest advantage to the United States? The evidence is, and the concurrent findings of both courts below is, that the lease was highly advantageous to the United States and better than it could have gotten from any other lessee. There is no evidence

that Mr. Sinclair knew or reasonably should have known what terms any other person desired to make with the Government but there is also no evidence that anybody else did offer any better terms than did Mr. Sinclair.

At pages 140 to 144 inclusive, Counsel for the Government cite cases to the effect that fraud may be proved by circumstantial evidence. But in none of the cases cited were inferences drawn from inferences or from rebuttable presumptions. In each case not only were there ample facts proved but they were such that no conclusion other than wrongdoing could fairly or reasonably be drawn from them. In none of the cases were the facts proved fairly or reasonably consistent with innocence.

At pages 140 to 141, Counsel quote from the case of *Rea* v. *Missouri*, 17 Wall. 532. The language quoted probably sufficed as a general statement of the point that the court was there seeking to make.

It does not show with any clearness or state with any certainty the rule governing the proof of fraud by circumstantial evidence. Indeed, it is intended to be so general in its nature as not to descend to particulars. The rule itself, as laid down by the courts, does descend to great particularity. In the above case the Court calls attention to "the great mass of evidence tending to prove" the frauds.

In *Glaspie* v. *Keator*, 56 Fed. 203, cited by Counsel at page 141 of their brief the Court points out that there was evidence which fully warranted a finding that the vendor had made representations to the purchaser which he at least believed to be untrue even if he did not know it. The Court also points out evidence in the case clearly indicating that the defendant Glaspie had caused the vendor to make the sale and the representations. A mo-

tion was made below that the jury be instructed to find that the defendant had not been guilty of any fraud or deceit. The Court below denied the motion and the jury found a verdict of guilty and the Court of Appeals affirmed. The evidence was abundant. The case was decided in accordance with correct principles.

In *Drake* v. *Stewart*, 76 Fed. 140, cited by Counsel at page 142 of their brief, there had been a directed verdict for the defendant. The Court shows clearly that the evidence was strong in every point against the defendant. Indeed, the Court says at page 143, "the evidence conclusively proved Bloss intended to keep the plaintiff in prison in the county jail without bail, through the night, and that he successfully accomplished that purpose." Nothing remained to the Court of Appeals but to reverse the case.

In *Drennen* v. *Southern States Fire Insurance Company*, 252 Fed. 776, cited by Counsel at page 143 of their brief, the last sentence of the quotation made by Counsel is sufficient to show what the Court held there. The facts there held to be sufficient were facts "from which an *inevitable* inference is to be drawn." (Italics ours.)

The case of *Attorney General* v. *Pelletier*, 240 Mass. 264, cited by Counsel at page 144 of their brief, is quoted from by Counsel in another connection at page 154 of their brief. As appears from the quotation at the latter page, "there was ample evidence introduced by the informant tending to prove that the respondent was guilty of many of the charges set forth in the information."

In *Lumpkin* v. *Foley*, 204 Fed. 372, cited by Counsel at page 144 of their brief, the statement by the court

shows the character of the evidence considered in that case. At page 378 the court, in speaking of the findings of the court below, stated that those findings "are abundantly sustained by all the evidence in the case".

In *Ware* v. *United States*, 154 Fed. 577, cited by Counsel at page 144 of their brief, the court points out that neither of the entrymen in any way occupied the lands; that Ware and his company did occupy them; that Ware was instrumental in causing the entries to be made and that there were many other facts which constituted not only ample but almost conclusive evidence.

In *Castle* v. *Bullard*, 23 How. 172, cited by Counsel at page 144 of their brief, the question did not relate to the weight to be given circumstantial evidence or inferences to be drawn from it but to the admissibility of evidence of a circumstantial character.

The Government's Argument that Silence is Proof.

At page 145 of their brief Government Counsel under the heading "The Silence of Sinclair is Evidence of Fraud" state "That the suspicious circumstances which it proved derived additional weight from the failure of Sinclair to take the stand." The facts which we have heretofore considered in the analysis of the Government's brief, characterized by Government Counsel to be, "proved facts resolved into badges of fraud", are now characterized as suspicious circumstances. We submit that Counsel misconceive the true rule as to silence. The alleged silence of Sinclair will not supply proof not made.

Counsel seek to escape the consequences of their inability to adduce proof of fraud by attempting to bring

their case within the well known principle that where there is affirmative evidence tending to fix a liability upon a party, additional weight may be allowed to the evidence against such party if he remains silent, notwithstanding full knowledge of all the facts is laid at his door.

In our view, Counsel, in making this attempt, have misstated both the facts of this case and the principle of law as to deductions from silence. We shall not attempt to follow the criticisms leveled by Counsel at the Trial Court upon this point, believing these criticisms show their own unworthiness and baselessness, but shall content ourselves with drawing from the authorities a statement of the principle as to silence, and then making application of that principle to the facts. That principle we submit, is that mere silence of a party will not supply lacking affirmative proof against him, but may be considered in weighing proofs already adduced tending to fix a liability upon him in matters where complete and more or less exclusive knowledge of the facts, concerning which he is silent, is laid at his door.

> *W. F. Corbin & Co.* v. *United States* (C. C. A. 6), 181 Fed. 296, 303:
>
> "An attentive examination of the record discloses no direct evidence tending to prove that the barrels were in a substituted condition when received by the claimants, nor are there, in our opinion, such facts and circumstances proven from which it might be reasonably presumed that the claimants received the packages in a substituted condition, unless it be assumed that the conduct of the claimants in remaining silent and offering no evidence tending to prove that the substitution

was made after they received the packages, or for that matter, offering any explanation as to when the substitution was made, can be used as a basis for the presumption that the barrels were in a substituted condition when they received them. If the verdict of guilty be predicated upon the assumption that the jury found from the evidence that the barrels of whisky were in a substituted condition when they were received by claimants, it must have been based upon the presumption that the whiskies, having been in that condition when seized, were therefore in that condition when received by claimants.

"The only basis for such a presumption disclosed in the record is the silence of the claimants themselves, and the total absence of any explanatory evidence touching the time when the substitution was made. But can such a presumption be indulged?

"There is a line of cases which hold that when a party to an action has in his exclusive possession a knowledge of facts which would, if disclosed, tend to throw light upon the transaction which is the subject of controversy, his failure to offer them in evidence may afford a presumption against him. Clifton *v.* U. S., 4 How. 242, 11 L. Ed. 957; Kirby *v.* Tallmadge, 160 U. S. 379, 16 Sup. Ct. 349, 40 L. Ed. 463; Commonwealth *v.* Webster, 5 Cush. (Mass.), 316, 52 Am. Dec. 711; Quantity of Distilled Spirits, Fed. Cas. No. 11,494; The Silver Moon, Fed. Cas. No. 12,856; United States *v.* Chaffee, Fed. Cas. No. 14,774; United States *v.* Mathoit, Fed. Cas. No. 15740. These cases hold that the silence of a party to an action may be the basis of a presumption against him to the extent of strengthening other evidence so as to warrant a finding against him, which, in itself, is not sufficient

to warrant such a finding, *but they do not go to the extent of holding that, where there is a total lack of evidence tending to show guilt, mere silence of the party proceeded against—may be the basis of a presumption of his guilt*" (Italics ours).

Owens Bottle Mach Co. v. *Kanawha Banking & Trust Co.* (C. C. A. 4), 259 Fed. 838, 842:

"In the course of the oral argument it was suggested that Martin's authority was inferable from the fact that, though present in court, he was not called as a witness, and that plaintiff offered no testimony, on the issue raised by defendant's plea of set-off. The rule of law is otherwise. In Wigmore on Evidence, vol. 1, par. 280, subsec. 5, it it stated thus:

'The opponent whose case is a denial of the other party's affirmation has no burden of persuading the jury, therefore, until the burden of producing evidence has shifted, he has no call to bring forward any evidence at all, and may go to the jury trusting solely to the weakness of the first party's evidence. Hence, though he takes a risk in so doing, yet his failure to produce evidence cannot at this stage afford any inference as to his lack of it; otherwise, the first party would virtually be evading his legitimate burden.'"

Stimpson v. *Hunter*, 234 Mass. 61:

"The failure of the defendant and of his son to testify although present in Court was not equivalent to affirmative proof of facts necessary to maintain the action. The defendant was not bound to offer any evidence unless and until evi-

dence was offered by the plaintiff warranting the submission of the case to the jury."

Shotwell v. *Dixon*, 136 N. Y. 43:

"Nor do we think the appellant's other contention—that, because the defendants were not sworn as witnesses in the case, the court may assume that a cause of action exists without the proof necessary to constitute it—can be upheld. So long as the plaintiff had not established a cause of action against them, they were neither required to make a motion for a nonsuit to protect their rights, nor were they called upon to introduce evidence to contradict or explain facts which were insufficient to establish any liability against them."

Texas & Pacific Ry. Co. v. *Shoemaker*, 98 Texas, 451:

"It is urged that the defendant should have produced the evidence of those on the engine to explain their connection with the tragedy. It appears that the engineer died before the first trial but sometime after the suit was brought, and that the fireman is still living and in the service of the defendant. The manner in which their train passed the point of the accident and proceeded on its way indicates strongly that those on the engine did not know of the occurrence. * * * A defendant cannot be called on to produce evidence where the plaintiff has failed to bring sufficient proof to prima facie sustain his cause of action."

Loper v. *Askin*, 178 App. Div. (N. Y.) 163, 164:

"When the plaintiff rested her cause of action was not made out. Hence no inference could be

drawn because defendant was not sworn. Defendant is not called upon to introduce evidence to contradict or explain facts which were insufficient to establish any liability against her."

Other cases to the same effect are:

Omar Oil & Gas Co. et al. v. *Bair Oil Co. et al.*, 285 Fed. 588;

Blackman v. *Andrews*, 150 Mich. 322, 114 N. W. 218;

Chicago Mill & Lumber Co. v. *Cooper*, 90 Ark. 326; 119 S. W. 672;

Thompson v. *Daviette*, 59 Ga. 472;

Lowe v. *Massey*, 62 Ill. 47;

City of New Orleans v. *Gauthreaux*, 32 La. Ann. 1126.

In support of their apparent proposition that silence of a party constitutes affirmative evidence against him and supplies proof of facts not otherwise shown, Counsel cite a number of cases. It seems to us that not one of these cases, as applied to the facts in the instant case, supports their contention.

Counsel for the Government, at page 149 of their brief, cite the case of *Bilokumsky* v. *Todd*, 263 U. S. 149, and furnish the Court with a single quotation from this case which, detached from the text and meaning of the case, might have a tendency to mislead. The quotation cited is (at p. 153):

> "Conduct which forms a basis for inference is evidence. Silence is often evidence of the most persuasive character."

Bilokumsky was arrested, in deportation proceedings, upon a warrant of the Secretary of Labor, as being an alien within the United States, in violation of law, the specific ground being that he had in his possession for the purpose of distribution printed matter which advocated the overthrow of the Government by force. He was accorded a hearing to enable him to show cause why he should not be deported, after which a warrant of deportation issued. While in the custody of the immigration authorities he filed a petition for a writ of habeas corpus, which was heard on a return and traverse and dismissed, and his appeal was taken under Section 238 of the Judicial Code. At the hearing which resulted in an order of deportation, all of the facts necessary to prove that Bilokumsky had in his possession for the purpose of distribution printed matter which advocated the overthrow of the Government by force were established without objection. *To prove alienage*, the inspectors called Bilokumsky as a witness. He was sworn but when questioned by the immigration inspector, under advice of counsel stood mute, refusing even to state his name. After this refusal an examination which had been taken of Bilokumsky in the Moyamensing Prison was introduced, in which *he had admitted that he was an alien*. He did not testify on his own behalf in the deportation proceedings, nor did he or his counsel make any claim that he was a citizen of the United States. This hearing under the warrant of the Secretary of Labor was conducted under certain rules, of which Rule 22, subdivision 5 (a) is as follows:

> "Upon receipt of a telegraphic or written warrant of arrest, the alien shall be taken before the

> person or persons therein named or described and *granted the hearing, to enable him to show cause, if any there be, why he should not be deported.*"

Under these circumstances, this Court said, amongst other things (at p. 153, 154):

> "Conduct which forms a basis for inference is evidence. Silence is often evidence of the most persuasive character. * * * If Bilokumsky was a citizen, inquiry into the fact was immaterial; and the whole proceeding must have fallen. He, presumably, knew whether or not he was a citizen. Since alienage is not an element of the crime of sedition, testifying concerning his status could not have been a tendency to incriminate him. There was strong reason why he should have asserted citizenship, if there was any basis in fact for such a contention. Under these circumstances his failure to claim that he was a citizen and his refusal to testify on this subject had a tendency to prove that he was an alien."

It is perfectly clear from the facts and from the full reading of the opinion that this Court simply held that officers charged with the administration of the Immigration Law were permitted to draw an inference from the silence of one who was called upon to speak, especially when his admission of alienage had been introduced against him.

In the case of *Runkle* v. *Burnham*, 153 U. S. 216, cited by Counsel at page 150 of their brief, a quotation made by Counsel relates to a certain power of attorney. This particular power of attorney was introduced in evidence. There was a claim that it was revoked, but no evidence of its revocation. This Court said:

> "True there is evidence tending to show that Mestre, the agent of Runkle in Havana, requested enlarged powers from Runkle, and there is also evidence tending to show the arrival at Havana on the day on which the contract was made of an instrument conferring the enlarged powers which Mestre deemed desirable to justify him in dealing with the city of Havana. There is, however, no evidence that the second power if received revoked the power which is in evidence."

The burden was on Runkle to show the revocation and he failed in that proof. The Court, moreover, indulged the inference that the new power did not revoke the old because Runkle failed to produce it. This does not make affirmative evidence out of his failure but is a comment, in passing, strengthening the right to find against him on an issue, the burden of which was upon him and on which he failed to produce any evidence.

Counsel also cite at page 150 of their brief *Penna. R. R.* v. *Anoka Nat. Bk.* (C. C. A. 8), 108 Fed. 482, 486. In that case it will be observed that the familiar rule is again enforced. Plaintiff in an action against a railroad company introduced evidence which tended strongly to show that the defendant managed and controlled the line of the road on which the loss occurred, although it was owned by a separate corporation. And the defendant, although having it within its power, failed to produce evidence to show the actual relationship between the two companies. The presumption was that such evidence would support the plaintiff's contention. It would be noted that a strong case was there made by the plaintiff against the defendant on the question at issue, and

secondly it appears that the defendant had it in its power to clearly explain the true relationship between the two railroads. Failing to do this, the usual presumption was indulged.

Counsel for the Government cite at page 152 of their brief the case of *Missouri K. & T. R. Co.* v. *Elliott* (C. C. A. 8), 102 Fed. 96. The single quotation excerpted by Government Counsel does not give the real story. In that case the plaintiff, suing for damages, endeavored to show that the defendant railroad had issued conflicting orders as to the movement of the two trains which had collided, and for that purpose in due time served upon the defendant a notice to produce the train time sheet or original dispatcher's record. This the defendant declined to do, whereupon the plaintiff put in secondary evidence as to these conflicting orders. The original order book and train sheets were in the defendant's possession but beyond the jurisdiction of the trial Court. The Court, speaking through Judge Caldwell, said (at p. 102):

> "The defendant having these records in its possession, and being able to produce them, but refusing to do so after due notice, the plaintiffs had a right to introduce secondary evidence of their contents."

Further on the Court says:

> "Moreover, if there was any doubt or uncertainty as to the absolute correctness of the evidence relating to the orders of the train dispatcher and the train sheet, the defendant had it in its power to show that fact by the production of the originals. It had had notice for years, by the depositions on

file, just what the plaintiffs' evidence on the subject would be. It is a well-settled rule that when the evidence tends to prove a *material fact which imposes a liability on the party*, and he has it in his power to produce evidence *which from its very nature must overthrow the case made aaginst him*, if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary." (Italics ours.)

The Court quote the maxim of Lord Mansfield and Mr. Starkie on Evidence, and then say: "A case cannot well be imagined where this rule could have a more cogent application." There is no evidence in the case at bar tending to prove as a material fact anything which "imposes a liability" on the defendant Mammoth Oil Company, or Mr. Sinclair, nor does it appear "that he has it in his power to produce evidence which from its very nature must overthrow the case made against him"—that is, assuming that there were any case made against Mr. Sinclair or the defendant on the facts. The rule laid down by the Court in the case cited is well established in every jurisdiction but has not the slightest application to the facts in this case.

In the case of *Glaspie* v. *Keator* (C. C. A. 8), 56 Fed. 203, cited by Counsel at page 153 of their brief, there was as shown by the Court "evidence which fully warranted" the finding of fraud. That being the situation, the Court in its opinion said: "It is also worthy of notice especially in a case of this character that Glaspie was not called as a witness to refute any of the allegations

of fraud." The case, in other words, is in entire harmony with the principle of law as stated by us.

In the case of *Hansel* v. *Purnell* (C. C. A. 6), 1 Fed. (2nd) 266, cited by Counsel on page 153 of their brief, a large amount of evidence had been introduced pro and con. The Court below found a decree for the plaintiffs on their Bill in Equity. This was affirmed by the Court of Appeals in the decision cited. The words quoted in Appellee's brief were used in that connection. Needless to say, this does not conflict in any wise with the statement of the principle made by the cases cited by us.

In the case of *Attorney General* v. *Pelletier*, 240 Mass. 264, cited by Counsel on page 154 of their brief, even the quotation by Counsel shows "that there was ample evidence introduced by the informant tending to prove that the respondent was guilty of many of the charges set forth in the information. This evidence, if believed, constituted abundant proof of the malfeasance and misfeasance in office arising from motives utterly unworthy of an upright man." In such a case the defendant was silent and the Court makes the comments quoted on that silence. This does not support Counsel's contentions.

We have read all of the authorities cited by Counsel at the bottom of page 155 of their brief and in our view not one of them in any way attempts to hold that silence of a party authorizes any inference against him except in cases where liability is otherwise proven against him.

Application to the Case at Bar of the Principle as to Inference from Silence.

Counsel claim that Sinclair was called upon to speak with reference to the following matters:

> 1. The transaction spoken of as the Continental Trading Company Matter.
>
> 2. In connection with Sinclair's "visit" to Fall's home at Three Rivers and his curious appearance as the man of opportunity just prior to his offer of February 3d.
>
> 3. What they characterize as undue intimacy with Fall as revealed by what they characterize as many private conferences.
>
> 4. What they characterize the sudden acquisition of wealth by Secretary Fall.

1. *Continental Trading Company matter.*

It will not do in considering that matter to ignore the evidence as Counsel have ignored it. We have at pages 38-48 of our main brief fully set forth the facts in relation to that matter and have argued the entire Continental Trading Company transaction at pages 65-162 of our main brief. We request the Court to review what we said there confident of the conclusion that there is nothing in the entire Continental Trading Company transaction which would have required Sinclair to go on the stand. What, we ask in that transaction was laid at his door?

2. *Sinclair's "visit" to Fall's home.*

What was there, we ask, in connection with Sinclair's visit to Fall's home at Three Rivers, New Mexico, at the

end of December, 1921, that has not been fully explained. Zevely testified that he and Sinclair went to see Fall on a matter pertaining to Osage Lease matters and that while there Sinclair inquired of Fall if Teapot Dome was to be leased, that Fall replied that he was then having an investigation made and upon that report would be determined whether or not Teapot Dome would be leased (R. 323). What is there in this inquiry that called upon Sinclair to further testify in addition to what Zevely testified to in reference to this conference?

In reference to Sinclair's "curious appearance" prior to his offer of February 3d, Robison testified that Fall told him that he had sent for Sinclair and Robison further testifies that when Sinclair arrived he frankly outlined to Sinclair what he, Robison, on behalf of the Navy, would insist upon in the event a lease was executed. We submit that in the light of this explanation there was nothing Sinclair was called upon to explain.

3. *The "undue intimacy with Fall."*

In reference to the undue intimacy with Fall as revealed by their many private conferences the Record discloses the following conferences between Sinclair and Fall: at Three Rivers, New Mexico, on or about December 31, 1921 (R. 323); at Secretary Fall's office in Washington, D. C., within a few days after the conference in the latter part of January, 1922, when Admiral Robison outlined to Sinclair the propositions that the Navy would want in the event that a lease was executed on Teapot Dome, or Naval Reserve No. 3 (R. 589, 607, 612); at Secretary Fall's office in Washington, D. C., on or about

February 18, 1922, at which Ambrose was asked to prepare a draft of a lease contract (R. 339, 708); at Secretary Fall's office in Washington, D. C., on April 7, 1922, when the lease was executed (R. 340).

At all of these conferences J. W. Zevely, a witness produced by the Plaintiff, was present. At some of these conferences Robison was present in addition to Zevely; and at some of the conferences Ambrose in addition to Zevely and Robison, was present. All of these gentlemen were witnesses and their testimony is in the Record.

What took place at these conferences, what was said and done, has been testified to by either Zevely, Robison, or Ambrose and there is no hint anywhere of anything sinister having taken place at any of these conferences. They were held just as conferences mentioned in evidence were held between Mr. Finney and various persons, and as conferences must be held between the Secretary and those seeking him on account of matters that he may have in charge. Was it ever supposed that a Secretary of the Interior could not talk with anyone? Nothing beyond that is indicated by the evidence here. We submit that nothing which can be characterized as "undue intimacy" between Mr. Sinclair and Secretary Fall was shown.

4. *The sudden acquisition of wealth by Secretary Fall.*

Mr. Booth testified that Mr. Everhart on May 29, 1922, brought to the Thatcher Estate Company, Pueblo, Colorado, $140,500 face amount of Liberty Bonds; that he applied $83,000 on the indebtedness of Everhart himself to the Thatcher Estates Company; $10,000 on notes of the Tres Ritos Cattle and Land Company; $15,000 on

a note of A. B. Fall; and credited $11,523.10 to Tres Ritos Cattle and Land Company's account (R. 538).

Mr. Rule testifies that on May 29, 1922, Mr. Everhart handed to him, Rule, $90,000 par value of Liberty Bonds with a statement by Mr. Everhart at the time that the bonds were the property of A. B. Fall. They were to be kept by the First National Bank of Pueblo "for Mr. Fall's account" (R. 533). We assume that it is these transactions which Counsel have characterized "the sudden acquisition of wealth by Mr. Fall."

How counsel can conclude that Fall had nothing before, and that the transactions above suggested constituted a sudden acquisition of wealth by Mr. Fall is something we cannot understand. Likewise we fail to see how Counsel can conclude that any supposed sudden acquisition of wealth by Mr. Fall had its source in Mr. Sinclair or could be explained by him.

Government Counsel's Argument That Inferences May Be Drawn From Inferences.

At page 156 Counsel assert, "The finding of bribery as one of the elements of fraud, is sustained by the proofs, and is not based on improper inferences or presumptions." Having induced the Court of Appeals to adopt the theory stated in their brief in that court that Mr. Sinclair bribed Secretary Fall, Counsel for the Government now seek to minimize the issue of bribery by characterizing the finding of the Court of Appeals in relation to it as a "sub-conclusion". We have hereinbefore demonstrated that the finding of fraud by the Court of Appeals was solely a finding of bribery. We

are confident that that finding is not sustained by the evidence and Counsel for the Government apparently concur as they now take the position that the finding of bribery is only one of the elements of fraud. But as we have shown early in this memorandum, there is no evidence of any sort of fraud and Counsel's characterization of various matters as fraudulent are mere assertions which they did not show to be supported by any evidence that the matters to which they refer were either unlawful or injurious.

Counsel recognize the force of the argument in our principal brief that the finding of the Court of Appeals as to bribery was arrived at by drawing inferences from inferences in that they now contend that fraud may be proved by drawing inferences from inferences. They seek at pages 162 and 163 to show that the cases of *United States* v. *Ross*, 92 U. S. 281, and *Manning* v. *Insurance Co.*, 100 U. S. 693, are not authorities for the proposition that inferences may not be drawn from other inferences and they quote a line or two from the opinion of this Court in each of those cases. We will quote fully enough therefrom to show what the facts involved were.

In the *Ross* case at page 283 of 92 U. S., the matter appears fully as follows:

> "Such were the facts found; and from them the court deduced, not as a conclusion of fact, but as a presumption of law, that the thirty-one bales removed on government wagons to the warehouse immediately adjoining the railroad at Rome, shortly after May 18, 1864, were a part of the forty-two bales received at Nashville on the 24th of August, four months afterward, and there turned over to the treasury agent. It is obvious

that this presumption could have been made only by piling inference upon inference, and presumption upon presumption. Because the thirty-one bales of the claimant were taken to the warehouse alongside of the railroad at Rome in May, 1864, and the cotton in that warehouse afterwards, at some unknown time (whether before or after August 19 does not appear), was shipped on the road to Kingston, it is inferred that the claimant's cotton was part of the shipment. Because somebody's cotton (how much or how little is not shown) arrived at Kingston from Rome at some time not known, and was forwarded to Chattanooga before the 19th of August, 1864, it is inferred that the claimant's thirty-one bales, presumed to have reached Chattanooga, thus arrived and were forwarded; and, because forty-two bales were received at Chattanooga on that day from the quartermaster at Kingston, it is inferred that the claimant's bales were among them. These seem to us to be nothing more than conjectures. They are not legitimate inferences, even to establish a fact, much less are they presumptions of law. They are inferences from inferences; presumptions resting on the basis of another presumption. Such a mode of arriving at a conclusion of fact is generally, if not universally, inadmissible. No inference of fact or of law is reliable, drawn from premises which are uncertain. Whenever circumstantial evidence is relied upon to prove a fact, the circumstances must be proved, and not themselves presumed. Starkie on Ev., p. 80, lays down the rule thus: 'In the first place, as the very foundation of indirect evidence is the establishment of one or more facts from which the inference is sought to be made, the law requires that the latter

should be established by direct evidence, as if they were the very facts in issue.' It is upon this principle that courts are daily called upon to exclude evidence as too remote for the consideration of the jury. The law requires an open, visible connection between the principal and evidentiary facts and the deductions from them, and does not permit a decision to be made on remote inferences. Best, Ev., 95. A presumption which the jury is to make is not a circumstance in proof; and it is not, therefore, a legitimate foundation for a presumption."

In *Manning* v. *Insurance Co.*, 100 U. S. 693, the Court after quoting from the *Ross* case, said at page 698:

"If these principles be applied to the present case, the inadmissibility of the presumption which the defendant contends the court should have permitted the jury to draw becomes apparent. That renewal premiums to a certain amount, upon which he was entitled to commission, had been paid to the Company, was the ultimate fact which was necessary to be proved. What the evidence did prove was, that there were policies in force on the 2d of June, 1871, the annual premiums upon which were $87,000; that he would be entitled to Commissions upon renewals of the policies, if they should be thereafter renewed, and if the renewal premiums should be paid to the Company, and that these premiums were to be collected by his subagents and paid over by them. These were the primary facts. Everything more was left to presumption. The jury, therefore, were to presume that the policies did not lapse, and that they were renewed. Built on this presumption was another, namely: that the renewal premiums were paid to the agents; and upon this a further presumption,

> that the premiums had been paid over by the agents to the Company, or had been immediately collected by it. This appears to us to have been quite inadmissible. A verdict of a jury found upon such evidence would have been a mere guess. The evidences of fact did not go far enough. We think, therefore, the court was not in error in withdrawing it from the consideration of the jury."

As supposed to be contrary to the view expressed by this Court, Counsel cite at page 165 of their brief, the case of *Cooper* v. *United States*, 9 Fed. (2d) 216. The truth is that in that case guilt was proven by circumstantial evidence, the conclusion being drawn from circumstances proved and not from other inferences or presumptions. The case is not at all in point. The same is true of *Dimmick* v. *United States*, 135 Fed. 257, cited by counsel at page 166 of their brief.

The case of *State* v. *Fiore*, *87 N. J. L. 311*, cited by Counsel at page 168 is no authority whatever that inferences may be drawn from other inferences. The request for the charge which was refused in that case was based on a misconception of the evidence. An examination of the case shows that certain facts were definitely proved not presumed or inferred and from which legitimate inferences might be drawn and the request for the instruction was therefore rightly refused, when considered in the light of the facts proved.

In the case of *Hinshaw* v. *State*, *147 Ind. 334* cited by Counsel at page 169 the very first sentence in the syllabus brands the case as no authority against the principle for which we contend. It is there said:

> "The evidence is sufficient to exclude every other reasonable hypothesis than that of defendant's guilt of murder of his wife."

In the course of the opinion the Court in reviewing the contention of appellant's counsel that the evidence was not sufficient to exclude every other reasonable hypothesis or supposition than that of the guilt of the accused said:

> "The inherent unreasonableness of this hypothesis is so great that even human credulity revolts at it."

The Court carefully reviewed all the evidence and demonstrated that there was no rebuttable presumption from which inference detrimental to the defendant could properly have been drawn but that the inferences drawn were deduced from facts clearly proved, some it is true by circumstantial evidence but none-the-less proved without being themselves presumed. It seems to us, that Counsel for the Government are driven to desperate straits in citing the Hinshaw Case as applicable to the facts in this case.

At page 172 of their brief Counsel for the Government quote from Wigmore on Evidence, 2d Edition, Volume 1, Section 41, the first sentence of the quotation being as follows:

> "It was once suggested that 'an inference upon an inference' will not be permitted, *i. e.*, that a fact desired to be used circumstantially must itself be established by testimonial evidence; and this suggestion has been repeated by a few courts, and sometimes actually enforced."

A reference to Mr. Wigmore's work will show that he cites as examples of cases where the suggestion has been "sometimes actually enforced" the cases of *United States* v. *Ross*, 92 U. S. 281 and *Manning* v. *Insurance Company*, 100 U. S. 693, which Counsel here attempt to say are not authority for the proposition. Mr. Wigmore goes on to say:

> "There is no such rule; nor can be * * * The judicial doctrines that sanction the fallacious and improper limitation originally put forward without authority must be taken as valid only for the particular evidentiary facts therein relied upon."

We are satisfied to allow Government Counsel to rely upon the authority of Mr. Wigmore. We prefer to rest upon the sound views announced by this Court in the cases referred to by Mr. Wigmore.

The Government's Argument as to the Illegality of the Lease and Contract.

Under the heading of "The Illegality of the Lease and Contract", Counsel for the Government make a labored effort to bring this case within the scope of the decision of this Court in the Pan American case. They have so misstated and misrepresented the provisions and character of the lease here in controversy and the evidence as to what caused the making of the lease that we shall reply to each of their contentions *seriatim*.

(1) Government Counsel's analysis of the lease of April 7, 1922, and the supplemental contract of February 9, 1923 (Brief p. 173).

(a) The Lease of April 7, 1922.

Counsel for the Government set great store by the preambles contained in the instrument of April 7, 1922. They state that the purposes and objects recited in the preambles are all stated as of equal importance as moving causes in the making of the lease (Brief p. 174). As a matter of fact, the preambles do not purport to state what was the moving cause of the lease. No distinction is made in the preambles between what caused the making of the lease and what features the Government sought to obtain in the lease. As we shall hereinafter show, the moving cause in the making of the lease was threatened loss of the Navy's oil by drainage and *after* it had been determined to make a lease the Navy Department determined that it would reserve to itself in the lease various options whereby it might secure, if it later so elected, certain advantages to the Navy. Preambles of a contract are not strictly any part of the contract and they may not be considered alone in determining what the intent of the parties was in the contract. The contract must be construed as a whole and the intention of the parties is to be collected from the entire instrument and not from any detached portions, it being necessary to consider all of its parts in order to determine the meaning of any particular part as well as of the whole.

Counsel for the Government quote from Article I of the instrument of April 7, 1922:

> "The lessor, in consideration of royalties to be paid and the covenants to be observed, as hereinafter specifically set forth, does hereby grant and lease to the lessee", etc.

Reference to the instrument itself shows the consideration to be paid by the lessee for the lease. It is double, consisting of the payment of royalties and the observance of covenants, the covenants being to furnish bond and to drill wells and develop the property in a diligent manner. This constitutes the sole consideration to be given by the lessee for the lease.

At pages 175 and 176 Counsel for the Government appear to be critical of the schedule of royalties agreed to be paid by the lessee. It is true that the royalties are upon the basis of average production per well per day for the calendar month. At the time the lease was made it was thought that such average production per well per day for a calendar month would run very high, based upon the Government's experience in the Salt Creek Field immediately adjacent and upon the assumption that certain areas of sand within the reserve, falling within certain structural contours of which the Government had adequate knowledge would contain the same amount of oil per acre as in the Salt Creek Field (R. 668). If the return to the Government in royalties has not been up to expectations, it is because the oil was not there and not because the scale of royalties in the Mammoth lease was not highly advantageous to the United States. As we pointed out in our main brief, the Mammoth royalties were considered better than those offered by the Texas Company (R. 668) and were more than

other oil men the Government's own witnesses, and the only witnesses who testified on the subject, would have been willing to pay.

At page 176 Counsel for the Government quote in heavy black type the following provision from the instrument of April 7, 1922:

> "The lessor agrees to, and does hereby, sell to the lessee, and the lessee agrees to, and does hereby, purchase from the lessor all the royalty oil hereinbefore mentioned, as and when the same is produced by the lessee, so that the lessee shall take and have title to and possession of, and the right to dispose of all oil, as and when the same is produced. In payment for said royalty oil, and in lieu of the delivery in kind to the lessor, lessee agrees to set up an oil exchange credit to lessor therefor and to issue to the lessor, as evidence thereof, oil certificates showing the amount of said royalty oil taken by the lessee and the value thereof."

They assert that this provision clearly shows that the transaction was intended to be and was in fact and in law a sale and that what arises on the delivery of the royalty oil is a debt from the lessee to the lessor. Here again we assert that this provision must be read in the light of the purposes of the contracting parties as gathered from the entire contract and must be considered in connection with other provisions of the contract. *United States* v. *Ansonia Brass & Copper Co.*, 218 U. S. 452, 467.

Reference to the whole contract shows that the parties intended that the Government should either get cash for

its royalty oils, in which event the transaction would be a sale, or it should get fuel oil and other oil products and if it so elected, sufficient storage facilities to conserve such fuel oil and other oil products, in exchange for its royalty oils, in which event the transaction would be not at all a sale but purely an exchange. The Government had the option as to whether the transaction should constitute a sale or exchange and the oil certificates furnished a convenient and practical way for the operation of such an option in the Government. It is absurd to assert that it is illegal for the lessee to be in debt to the lessor for the royalty oils. The lessee, of course, cannot promptly account to the lessor for each barrel of oil as it is brought out of the ground. It is universally customary in the oil industry for lessees to account to lessors periodically. No other method would be practicable. This has been recognized in the regulations of the Department of the Interior concerning oil and gas leases made under the General Leasing Act of February 25, 1920. These regulations provide that the royalty due under the leases made thereunder shall be payable on the fifteenth day of the month succeeding the month in which the oil is produced (General Land Office Circular 672, approved March 11, 1920).

Counsel for the Government find in the words on the oil certificates "being of a cash value of $," plain indication that these certificates could not be used as a medium of exchange but only as creating a debt from the United States to the lessee. The form of certificate is set forth at Record page 25. The oil certificate itself refers to the terms of the instrument of April 7, 1922, and cannot be interpreted or understood without refer-

ence to the provisions of that instrument. For example, the first option mentioned in the oil certificate which is only half quoted at page 177 of the Government's brief, is that the certificate will be redeemed:

> "(a) As a credit upon, or for the extinguishment of any obligation to the maker hereof from the United States Government by reason of the construction of steel tank storage for the use of the United States Navy in the storing of fuel oil under the agreement for the exchange of crude oil for fuel oil and storage under the contract between the United States of America, acting on this behalf by the Secretary of the Interior and the Secretary of the Navy, of the one part, and the Mammoth Oil Company of the other part, of date the ..... day of April, 1922;" (R. 25).

Referring now to the agreement (R. 26) it will be seen that the storage referred to in the oil certificate is only such as shall become necessary for the storage of such fuel oil as the United States might elect to receive in exchange for its royalty oil, accruing from this particular lease. Thus it is obvious that the option as to storage cannot be exercised independently of the option as to fuel oil. Counsel for the Government over and over again assert that the purpose of the lease to Mammoth Oil Company was to create fuel depots and to build great storage facilities but one need only read the contract to see that it contemplates no storage whatsoever beyond what is actually needed to conserve the fuel oil that the Government under other options reserved to it may elect to receive for its royalty oil from Naval Reserve No. 3. The oil certificate must have a cash value

for the purposes of the storage option inasmuch as the agreement provides that the cost of such tankage as the lessor requires the lessee to build shall be liquidated in certificates of a face amount in value equal to the cost of such tankage.

Option (b) of the oil certificate relates to the exchange for fuel oil. Reference to the agreement shows that that exchange was without reference to any cash value but was on purely a quantitative basis so that the cash value of the certificate cuts no figure where the certificate is used in exchange for fuel oil.

Option (c) in the oil certificate relates to an exchange for gasoline, kerosene, lubricating oils and other petroleum products required by the United States Navy, but the basis of the exchange is left for further agreement.

Option (d) permits the Government to redeem the oil certificates in cash, in which event, as we have pointed out, the transaction resolves itself into a sale of the royalty oils. We shall consider the Government Counsel's criticism of this option later in connection with the question of severability.

In connection with Counsel's attack on the first three options as constituting a sale, it should be remembered that the Act of June 4th authorized both sale and exchange.

It may be that where a statute gives authority to sell property of the Government with no indication in the statute of any willingness on the part of the Government to accept other property in payment or part payment, the sale must be for cash. It may also be that where a statute gives authority to exchange property of the Government with no indication in the statute that the Government is

willing to accept cash instead of property in payment, or as compensation, exchange might be limited to mere bartering of property for property. In the cases mentioned, the words *sell* and *exchange* might be held to narrow and technical lines. But what shall we say of authority to *sell* Government property which has written in the very authority a clear indication that the Government is willing to take for its property other property or cash or both? And what shall we say of authority to *exchange* property of the Government when the very statute giving the authority manifests a clear willingness that the Government shall receive property or money or both? In the case at bar, the statute uses the word *sell*, but not alone. It uses as well the word *exchange*. Therefore, it is entirely within the authority of the statute to dispose of the oil for an equivalent in any way that may be deemed within the policy of the act of June 4, 1920, whether all cash or part cash or no cash is the result. If the word *sale* is defined differently by the courts, depending on its surroundings; if in other words, by reason of its surroundings or the absence of surroundings, a sale is sometimes defined as being a disposition of property for cash only, and if in other cases a transaction is denominated a sale where property is given and received, but the property, both that given and that received, is measured by money values, then in the Special Act of June 4, with the two words *sell* and *exchange* each of these kinds of sale is necessarily included within the authority to sell. They are both necessarily within the intention of Congress, in that Congress has not restricted the sale to cash only but, on the contrary, has shown that property may be accepted as the equivalent of the oil disposed of. If the

word *sell*, in reasonable definition, trenches close upon the word *exchange* in reasonable definition, then the statute gives to the Secretary of the Navy the power to sell by any method, no matter how closely trenching upon what would otherwise be called an exchange. And likewise, when the statute authorizes an exchange, it authorizes anything which might be called an exchange, no matter how closely it trenches upon that which would be otherwise denominated a sale. The whole field is covered by the two words and is intended to be covered.

In *Howard* v. *Harris*, 90 Mass. (8 Allen), 297, 299, the Supreme Judicial Court of Massachusetts, speaking through Judge Bigelow, said:

> "In a general and popular sense, the sale of an article signifies the transfer of property from one person to another for a consideration of value, without reference to the particular mode in which the consideration is paid. It was in this sense that the legislature used the word, and not in the technical and narrow sense of a transfer for a price paid or agreed to be paid in money. *The legal distinction between a sale and an exchange is a purely* artificial one; the rules of law are the the same as applied to both transactions. Practically there is no difference between them. To make such a refinement the turning point of the interpretation of a statute, contrary to the plain intent of the legislature, would be a violation of all sound rules of construction." (Italics ours.)

In *Berger* v. *U. S. Steel Corporation*, 63 N. J. E. 809, 817, it was said:

> "Sale and exchange are used interchangeably in the law, and is a transmutation of property from

one party to another in consideration of some price or recompense in value."

See also:

Baltimore & Ohio R. R. Co. v. *Western Union Telegraph Co.*, 241 Fed. 162;
Postal Telegraph-Cable Co. v. *Tonopah & Tidewater R. R. Co.*, 248 U. S. 471;
Rockefellow v. *Merritt* (C. C. A. 8) 76 Fed. 909;
Huff v. *Hall*, 56 Mich. 456;
Steere & Ballah v. *Gingery*, 21 So. Dak. 183;
McDuffie v. *State*, 19 Ga. A. 39;
Jenkins v. *Mapes*, 53 Ohio State, 110;
Pratt v. *Wickham*, 133 Mich. 356;
Mitchel v. *Gile*, 12 N. H. 390;
Clark v. *State*, 167 Ala. 101;
Lommen v. *Danaher*, 165 Wisc. 15;
23 *Corpus Juris*, Section 38, p. 208.

We therefore deem it of no consequence as to whether the transaction should be called a sale or an exchange.

(b) The Supplemental Contract of February 9, 1923.

Counsel for the Government at page 181 of their brief state that because the supplemental agreement recites that the Government has requested Mammoth to construct the storage facilities specified in it, "it is therefore quite clear that the positive and absolute covenant of Mammoth to construct such storage facilities, appearing at R. 26, and contained in the original lease agreement, has now become effective by reason of the Govern-

ment's demand." This exemplifies Counsel's strained effort to have this Court believe that the contract of April 7, 1922, was for the construction of storage facilities. What the supplemental agreement of February 9, 1923, really makes quite clear is that the original agreement of April 7, 1922, did not contain any covenant to construct storage facilities but merely provided that if the Government elected to exchange some of its royalty oil for fuel it might also elect to exchange additional royalty oil for such storage facilities as were required to conserve the fuel oil elected to be received for the royalty oil accruing under this particular lease. In the supplemental agreement which was executed ten months after the original agreement the Government merely exercised its option to have its certificates redeemed in fuel oil and other oil products, together with storage facilities necessary for the conservation thereof. The supplemental agreement was not primarily for the building of storage facilities. It was primarily for the obtaining by the Government of fuel oil and other oil products in exchange for royalty oil accruing to it from the lease of April 7, 1922, and incidentally such storage facilities as were necessary to conserve such fuel oil and other oil products.

A short answer to Counsel's criticism of "the possibility of abuse under such a contract" (p. 182 of their brief) is found in the testimony of Admiral Gregory under whose supervision the work at Portsmouth, New Hampshire was done. He testified that the work was done in accordance with the Navy's requirements and was excellent in character; that he believed the work had been done cheaper in the method that had been adopted than could have otherwise been done and that

the Navy obtained for a million one hundred thousand dollars a plant which would have cost it a million two hundred fifty thousand dollars if built under a lump-sum contract (R. 716-17). His testimony was nowhere contradicted but was corroborated by Commander Sherman, a witness called by the Government (R. 426).

(2) The Government's contention that our construction of the lease is unwarranted.

Government Counsel's next heading is "Appellant's Unwarranted Construction of the Lease" (Brief p. 183). The matter stated under that heading has to do entirely with the question of severability and will therefore be considered by us in that connection hereinafter.

(3) The Government's contention as to the real purpose of the lease.

The next matter discussed by Counsel for the Government is "The Real Purpose of the Lease" (Brief p. 187).

Throughout their brief, counsel for the Government make labored efforts to establish that the real purpose of the lease to Mammoth Oil Company was to provide fuel depots on the Atlantic Coast and to obtain for the benefit of the United States the construction of a pipe line to serve Naval Reserve No. 3 and other territory of the United States, namely, the Salt Creek Field. They assert (page 187) that we have adopted for the first time in this court an entitely novel position with regard to the lease. They then refer to what they claim was our contention in the courts below in reference to the con-

struction of the Act of June 4th. The truth is that in the Courts below we argued the construction of the Act of June 4th, 1920, in the alternative. We contended first that Congress in the light of the knowledge which it must be presumed to have had that drainage of the Naval reserves was threatened, determined the danger of drainage itself and directed the Secretary of the Navy to develop the reserves, or, second, that Congress left the determination of that question to the Secretary of the Navy and authorized him to develop the reserves in case of threatened drainage. As we have shown at page 170 of our main brief, both lower Courts adopted our alternative construction of the Act. At the trial of the cause we showed through Admiral Robison and Dr. Bain that the cause of the lease here in controversy was drainage and that the purpose of the lease was to save the Navy's petroleum and both Courts below held under the evidence that the lease was authorized.

The decision to lease Teapot Dome was made by Secretary Denby in the latter part of January, 1922 (R. 586) subsequent to a conference between Admiral Robison, Secretary Fall, Dr. Bain and Mr. Ambrose at which Admiral Robison determined to recommend the lease because of threatened loss by drainage (R. 645). The record discloses that prior to that conference there was no thought on the part of Admiral Robison of leasing Naval Reserve No. 3 for the purpose of obtaining storage facilities on the Atlantic Coast or for a pipe line or indeed for any purpose. It will be recalled that at a conference held about October 23, 1921, Admiral Robison and Interior Department officials worked out a tentative policy in respect of the Naval Petroleum Reserves, more especi-

ally in reference to Reserves Nos. 1 and 2. As to No. 3 it was determined at that conference that the data Dr. Bain and Ambrose had seen in Denver, taken in connection with the Wegemann Report, warranted a further investigation by the Bureau of Mines (R. 663-5). Just after that conference Admiral Robison prepared for Secretary Denby's signature the so-called policy letter of October 25, 1921, and in that letter it was expressly stated "that the development of Naval Petroleum Reserve No. 3 is not to be undertaken except to protect the Government against depletion of the reserve by other parties" (R. 282, par. 9 of letter of October 25, 1921).

The record will be searched in vain for any fact indicating that the purpose thus expressed in the letter of October 25th was in any respect departed from. The whole history of the decision to lease Naval Reserve No. 3 is one of drainage. No other factor or consideration entered into it.

After Secretary Denby had decided to lease Naval Reserve No. 3 Admiral Robison communicated that decision to Secretary Fall and at the same time told Fall of the desires of the Navy in connection with the lease. Referring to the terms he desired in a lease, as set forth to Secretary Fall, Admiral Robison testified:

> "*Before I laid out those terms* I had received information at the conference from Dr. Bain and Mr. Ambrose who told me that the Wegemann report was confirmed and that there was grave danger of the property being seriously damaged by drainage and that fact as to the serious danger of damage from drainage to Reserve No. 3 moved me in this conference to decide finally that

ters covered thereby and not at all to the cause or the purpose of the lease. Not only is the testimony quoted by the Government not "the only testimony on the subject of the real underlying purpose for the making of this lease" but it is not testimony on that subject at all. We have, in our main brief, and hereinbefore in this memorandum, shown that the testimony is that the cause of the lease was drainage and the purpose of it was to save the Navy's petroleum.

We respectfully suggest to the Court that the testimony of Admiral Robison, Dr. Bain, Mr. Ambrose and Colonel Zevely, which comprises 132 pages of the Record, will fully support our position and that isolated excerpts from the Record should not be accepted as indicating the motive which induced the Secretary of the Navy to make this lease. For example, Government Counsel quote at page 20 of their brief from their cross-examination of Admiral Robison, without stating that just preceding the matter quoted occurs the following:

> "I think probably the Pan American Contract was dicussed at that time in view of the recent return of Dr. Bain from the California coast. I think Dr. Bain brought up the question of Teapot Dome. He said, in effect, in substance, that the reports from the field were that the drainage of Teapot Dome was existing and that serious drainage was dangerously probable. Ambrose echoed his remark. Secretary Fall said, 'What are you going to do about it?' And I said 'I certainly am not going to repeat the disaster that we had in California. We have got to develop Teapot Dome' " (R. 645).

(4) The Pan American Case.

Government Counsel's next heading is "The Attempt to Distinguish the Pan American Case" (Brief p. 191).

This case is clearly distinguishable from the Pan American case and we will not here repeat what we have said in our main brief in that connection but shall confine ourselves to calling the Court's attention to the errors in the statements made in the Government's brief. They say that Admiral Robison frankly stated that after he had taken care of the Pearl Harbor situation "he then turned his attention to the Atlantic Coast and considered that the Navy's needs for fuel depots on that coast could be supplied from Teapot Dome" (Brief p. 191). They cite in that connection Record pages 611 and 637, but at neither place does the record support any such assertion although Counsel in their cross-examination of the witness most adroitly attempted to develop from him something upon which they could hang their fuel depot argument. Of that Admiral Robison said at page 611 that "the only available place from which we could get a supply for the Atlantic Coast was Teapot Dome." He did not at all say that he was going to develop Teapot Dome in order to get fuel oil depots on the Atlantic Coast. He further stated at page 611 of the Record that he did not discuss the Atlantic situation with Secretary Fall prior to the interview he had with him late in January at which time he did say to him that the lease of Teapot Dome would give similar advantages on the Atlantic Coast. Before he made that statement to Secretary Fall he had determined to lease Naval Reserve No. 3 because of threatened loss by drainage. The other citation to Record page 637 merely shows, taken in con-

nection with the lease as executed, that Admiral Robison sought to obtain in the lease a right whereby the Navy might elect to receive fuel oil and storage facilities therefor in case it so desired. This also does not at all bear out the assertion that the lease of Naval Reserve No. 3 was made in order that such storage facilities might be constructed. In the Pan American case the leases there in controversy were made in order to give the Government more royalty oil to exchange for fuel oil and storage facilities. They were made in aid of the fuel depot projects. This record discloses that that was not the situation in this case.

Again at page 192 Government Counsel say:

> "Robison frankly states that this lease was made to take care of a national emergency (R. 584-86). By this he unquestionably means the provision of depots not authorized or appropriated for by Congress."

This is doubly erroneous. In the first place a "national emergency" did not cause the making of this lease. Time and again Admiral Robison testified that serious danger of drainage was what moved him to recommend the leasing of Naval Reserve No. 3 (R. 607-8; 584; 645). In the second place the "national emergency" referred to by Admiral Robison (R. 645) was clearly shown by him to be "the Japanese situation" (R. 646) and Admiral Robison nowhere says that that situation caused him to make the lease. Why indeed, would a detailed investigation of the question of drainage, such as we have shown in our main brief was made, have been necessary if Admiral Robison made this lease for any reason other than drainage?

Counsel for the Government maintain that the Secretary of the Navy exchanged Naval Petroleum Reserve No. 3 for the building of a pipe line.

In respect of the pipe line we submit first that the Government should not be permitted to litigate this question. It is a general rule in equity that the issues are those made by the pleadings and that the plaintiff may succeed only on the issues tendered by the bill. *Reed* v. *Munn* (C. C. A. 8), 148 Fed. 737; *McKinney* v. *Big Horn Basin Development Co.* (C. C. A. 8) 167 Fed. 770; *Kennedy* v. *Custer* (C. C. A. 8), 174 Fed. 972.

An inspection of the bill of complaint here discloses that the plaintiff alleged the grounds upon which it was claimed the lease and supplemental contract were illegal. The specifications of illegality are in paragraphs 15, 19, 21 and 22 (R. 6-8). The substance of these specifications of illegality is:

> (1) That the contracts were made without advertisement or competitive bidding.
>
> (2) That the negotiations for the contracts were carried on under the Executive Order and by and between Secretary Fall and the defendant.
>
> (3) That Secretary of the Navy Denby took no part in the negotiations of the contracts and exercised no discretion with regard thereto.

The defendant was never given an opportunity to litigate the question of the legality of the pipe line feature. If it had been given such an opportunity, it could have introduced abundant evidence that the pipe line constituted no part of the consideration for the lease. For that matter Counsel for the Government in taking the

testimony in this case themselves proved on cross-examination of Admiral Robison that these projects (the lease and supplemental contract and operations under them) were accomplished "*without charge to the Navy for the pipe line*" (R. 612). If it be true that the pipe line cost the Government nothing, as plaintiff itself proved on the trial, we do not see how it could have rendered the contracts unlawful.

In the courts below Counsel for the Government ridiculed the pipe line feature and expressed very great amusement inasmuch as they pointed out that the pipe line would have come in any event. However, they now think it is a most serious matter, making the entire contract of April 7, 1922, illegal.

At page 193 of their brief Counsel say that "every element denounced by this Court in the Pan American decision is present in this case. The Atlantic Coast fuel depots were admittedly parts of the one hundred three million dollar fuel depot building scheme of the Navy." The difference in the two cases is briefly this. In the Pan American case leases were made in Naval Reserve No. 1 in order that the Navy might realize therefrom sufficient royalty oil to build fuel depots. As stated by this Court, the contracts and leases there in controversy had no purpose to save petroleum. In this case the lease of Naval Reserve No. 3 was made as a conservation measure; in other words to save the Navy's oil in Naval Petroleum Reserve No. 3, and it was made solely for that purpose. If the facts as laid before Secretary Denby and his representative Admiral Robison were such as to authorize him to decide that loss of petroleum to the Navy was threatened, it was within his discretion to

reach such conclusions as might fairly be deduced from the facts laid before him.

Counsel for the Government go on to say:

> "Indeed the supplemental contract itself shows a scheme of building on that coast (the Atlantic Coast) that would run into millions upon millions of dollars for fuel depots never authorized by Congress" (Brief pp. 193-194).

The answer is, that is not so unless Naval Petroleum Reserve No. 3 would yield to the Navy in royalties multiplied millions upon millions of barrels of oil. Unfortunately Naval Reserve No. 3 will not yield any such stupendous quantities (R. 668).

(5) The Government's Charge that We Seek to Have This Court Reverse Its Holding in the Pan American Case.

Counsel's next heading is "The Attempt to Have This Court Reverse Its Holding in the Pan American Case" (Brief p. 194). We have not at all argued, as Counsel assert, that the appropriation of five hundred thousand dollars contained in the Act of June 4, 1920, is no limitation upon a fuel depot building scheme. Our contention is, and both lower Courts have found on the evidence, that the lease and contract here do not involve a fuel depot building scheme. Counsel quote from the decision in the Pan American case (Brief p. 195), but the language so quoted is to be taken in connection with that just preceding, namely, "it was the purpose of those making the contracts and leases to circumvent the laws and defeat the policy of the United States established for the conservation of the Naval Petroleum Reserves. The

purpose of the representatives of the Department was to get for the Navy fuel depots or storage facilities that had not been authorized by Congress. The leases were made to obtain the crude products for use as a substitute for money to make good the amounts advanced by petitioners to pay for such improvements." What we contend is that that language is not at all applicable to this case. The lease here was made for the purpose of conservation and only for that purpose. There was no purpose to get for the Navy fuel depots or storage facilities. The lease here was not made in aid of any such purpose but was made solely to protect Naval Reserve No. 3 against threatened loss by drainage. In this case the Secretary of the Navy took no action except such as was appropriate to conserve the Navy's oil and to carry out the policy for which the naval petroleum reserves were created.

(6) Severability.

Counsel for the Government have not attempted to answer the arguments contained in our main brief upon the question of severability. They assert that we argue only for the severability of the supplemental agreement. We do argue that the supplemental agreement is clearly severable but we go further than that and contend that not only the supplemental agreement but all of the provisions contained in the instrument of April 7th, 1922, in reference to the disposition of the royalty oils sever themselves naturally from the lease proper contained in that instrument. The lease is not as stated by Counsel bilateral but is unilateral. The Government leased to

Mammoth Oil Company the lands included in Naval Reserve No. 3. On its part the lease is executed; nothing further is to be done by the lessor. As consideration therefor the lessee is to pay stipulated percentages of the oil produced as royalties and is to proceed with diligence and in accordance with the requirements laid down by the lessor to drill wells and develop the property. When and as the lessee drills the wells as so provided and pays the royalties stipulated, the lessor receives everything which it has agreed will constitute full consideration to it for the lease.

In *United States* v. *Bradley*, 10 Pet. 343, Mr. Justice Story said:

> "That bonds and other deeds may in many cases be good in part and void for the residue, where the residue is founded in illegality, but not *malum in se*, is a doctrine well founded in the common law, and has been recognized from a very early period. The doctrine has been maintained, and is settled law, at the present day, in all cases where the different covenants or conditions are severable, and independent of each other, and do not import *malum in se*. • • •
>
> "There is no solid distinction in cases like the one before the court, between bonds and other deeds containing conditions, covenants or grants, not *malum in se*, but illegal at the common law; and those containing conditions, covenants or grants illegal by the express prohibition of statutes. In each case the bonds or other deeds are void, as to such conditions, covenants or grants which are illegal, and are good as to all others which are illegal and unexceptionable in their purport. The only exception is when the statute

has not confined its prohibitions to the illegal conditions, covenants or grants; but has expressly or by necessary implication, avoided the whole instrument to all intents and purposes."

In *McCullough* v. *Virginia*, 172 U. S. 102, 113, 114, it is said:

> "But the promise on the part of the state, written into these coupons and authorized by the act of 1871, was a promise to pay so much money and to receive such promise in satisfaction of taxes. • • • But in the case at bar there is no illegality in the consideration. That was furnished by the bondholder in the old bond, and that bond was the sole consideration. It is nowhere suggested that there was any vice or illegality in it; that it was not a valid obligation of the State. When the bondholder surrendered that he furnished the entire consideration for the contract, and for that he received from the state a promise. And as the Supreme Court of Ohio said in the case above cited: 'When, however, for a legal consideration, a party undertakes to do one or more acts, and some of them are unlawful, the contract is good for so much as is lawful and void for the residue.' The Court of Appeals concedes that the promise made by the State to pay the interest is valid, because made upon a good and lawful consideration. Does it not logically follow that the promise of the State is also good as to all other matters contained within it in respect to which it might lawfully make a promise? It promised to receive the coupons 'for all taxes, debts, dues, and demands due the State.' That promise was necessarily for each tax and debt, as well as for all taxes and debts. If it should so happen that any single

> tax or debt cannot, under the constitution of the State, be lawfully discharged by the receipt of the coupon, there is no difficulty in separating that part of the contract from the balance. And as said by the Supreme Court of Ohio: 'Whenever the unlawful part of the contract can be separated from the rest, it will be rejected and the remainder established.' "

But even if it be held that the provisions in the instrument of April 7, 1922, relating to the disposition by the Government of its royalty oils to the lessee are not severable from the lease, clearly if any of the *alternative* methods by which the Government may have the oil certificates representing its royalty oil redeemed, are invalid, the illegal methods may be stricken out and the Government will still be able under the contract to obtain for its royalty oil what it has agreed will constitute full consideration therefor. Government Counsel assert that the whole scheme of the lease clearly indicates that the first thing to be derived by the Government is steel tank storage to be built and filled with fuel oil by the lessee (R. p. 185). If that were so, why does the contract itself provide that the Government may receive for its royalty oils either fuel oil *or* other oil products *or* cash? The parties intended what they wrote in the contract and it does not lie in the mouth of Government Counsel to assert that they intended something else. If the option as to storage tankage, limited as it is, be held invalid, it may be stricken out and the Government will still be able to receive full consideration for its royalty oils in any one or more of three ways. It may exchange all or any part of its royalty oils for fuel oil. It may exchange all or

any part of its royalty oils for Diesel oil, lubricating oil and other oil products suitable for use by the Navy, or it may take cash for all or any part of its royalty oils. Counsel for the Government refer to certain provisions in respect of the option to redeem oil certificates in cash which favor the other options in reference to notice, etc. Those provisionus are as much in favor of the options for fuel oil and other oil products as they are the option for storage tankage. Counsel persist in treating the provision requiring previous notice for redemption of oil certificates in cash as a provision in favor of the option for storage tankage but that simply is not true. It is as much in favor of the other two options mentioned. We cannot conceive that the options for fuel oil and other oil products will be held illegal but if they are so held to be illegal and the option for storage tankage is held to be illegal, leaving only the option to take cash for the royalty oils, then every provision in the contract which in any way limits the right to exercise the option to take cash, will fall with the other options in the contract in whose favor the provisions limiting the right to receive cash were intended.

The case of *New York Central and Hudson River Railroad Company* v. *Gray*, *239 U. S. 583*, seems to us to dispose of this question. In that case Gray had a contract with the New York Central by which he was to receive for certain maps $750.00, $150.00 of which was to be paid in cash, and the balance in transportation between New York City and a certain point in Pennsylvania. The cash payment was made, but it became unlawful to furnish the transportation. An action was brought *upon the contract itself* seeking to recover in

money the balance due, although by the contract that balance was not to be paid except in transportation. This Court sustained the action on the contract and the plaintiff recovered in money the amount which had been promised to be paid in transportation. The Court held that the Railroad Company was right in refusing to furnish the transportation, and proceeded: "But from this, it by no means follows that it could refuse to make compensations in money for the unpaid balance of the purchase price of the map. * * * But there is nothing in the act to prevent or relieve a carrier from paying in money for something of value which it had long before received under a contract valid when made, even though the contract provided for payment in transportation which the passage of the act rendered thereafter illegal."

The case at bar is even stronger than the Gray case, in that it provided for payment in money if the Government should so elect. It provided alternative payments should the Government elect these alternatives. If an alternative could not be elected because unlawful, then under the Gray case, the agreement required lawful payment.

In the Gray case, the contract itself did not on its face allow Gray at any time to elect cash. Yet the court swept out the alternative and, by that, gave Gray the right to call for cash, not as a *quantum meruit*, but on the contract itself.

The cases cited by Counsel for the Government do not at all answer the questions which we have raised in our main brief and here.

In the case of *Hazelton* v. *Scheckells*, *202 U. S. 71*, cited by Counsel at page 198 of their brief, the considera-

tion was not in the alternative but was two matters joined, namely, services rendered in getting a bill through Congress and the money—$9,000. There was no separation. There was no way by which the entire consideration could be paid without including the illegal part.

In the case of *McMullen* v. *Hoffman, 174 U. S. 639*, cited by Counsel at page 199 of their brief, the question involved was not the consideration for the agreement; it was an agreement illegal on its face and involving the whole matter. There was a larger agreement by which plaintiff and defendant were to put in bids to the city known to each other, that fictitious bids should be put in without expectation or purpose of having them taken, and that if the contracts were procured the two companies would perform the work as partners. The whole was held to be fraudulent as against the city and the single smaller agreement of sharing between the co partners, the two operating companies, was held to be only a part of it, and the larger contract, being illegal and being that upon which the smaller contract entirely rested, made void the smaller contract.

In the case of *Langle* v. *Snyder, 160 Fed. 627*, cited by Counsel at page 201 of their brief, the rental moneys stipulated to be paid were agreed to be paid for the use of a pasture and the stipulations were of such character that the Court construed them as requiring the lessee of the premises to maintain fences enclosing them. This required the violation of a federal statute against enclosing public lands. There was nothing in the rental charge which apportioned a part to the lands that might lawfully be leased but it was a single rental for all the lands.

In the case of *Western Indemnity Co.* v. *Crafts, 240 Fed. 1*, cited by Counsel at page 201 of their brief, the particular contract was an essential step in a design to induce the Treasurer of the State of Ohio to deposit moneys feloniously in a certain bank. It is needless to say that the Court would not enforce any such step or any contract constituting part of such step.

The case of *Townes* v. *Townes, 270 Fed. 744*, cited by Counsel at page 201 of their brief, deals with a co-partnership agreement containing several elements. By one part of the agreement Robert Townes agreed to sell to Charles a certain plantation which Charles was to manage for the benefit of the co-partnership for a period of five years. Charles died before performance. The action was brought by Robert against the heirs of Charles for the cancellation of the contract to sell the plantation. The Court held that the death of Charles dissolved the partnership and thereby ended the contract. At page 749 the Court say:

> "The party thereto who was to contribute his personal skill and peculiar knowledge of the property to its management, and to whom this credit was to be extended, died intestate. We cannot but think that the contract for the management of the place until June 15, 1922, and to then execute a deed, is an entire one, and that the death of Charles rendered impossible the carrying out of an essential part of the contract by which this agreement to sell in the future was made, and releases Robert, from the obligation to sell."

In *Central Railroad of New Jersey* v. *United States Pipe Line Company*, 290 Fed. 983, cited by Counsel at

page 201 of their brief, there was an agreement by the Railroad Company to grant the defendant a right of way for a pipe line. That portion of the agreement is not further involved in the case because the pipe line was never constructed and no action with reference to its construction seems to have been brought. What was left then was an agreement by which the Railroad Company agreed to carry oil to tidewater for a fixed toll. The defendant agreed, *first*, to pay the tolls on oil shipped, *second*, to ship not less than a stipulated quantity; *third*, to pay on shipments not made 40% of agreed tolls.

The agreed tolls violated the statute. These agreed tolls constituted the whole of the contract upon which suit was brought, and being unlawful the whole contract failed for illegality.

In the case of *Linebarger* v. *Devine*, 47 Nev. 67, cited by Counsel at page 201 of their brief, the Court adopts the same principle and in addition uses this language:

> "Whether a contract is entire or separable into distinct and independent contracts is a question of the intention of the parties to be *ascertained from the language employed and the subject matter of the contract.*" (Italics ours.)

In the case of *Orenstein* v. *Kahn*, 13 Del. ch. 376, cited by Counsel at page 201 of their brief, the evidence disclosed that the different items, three in number, and the purchase, were in fact all bound up in a single matter of operating a particular store. The Court therefore found that "the agreement to convey the store, goods and fixtures in said store property was inseparably connected with the agreement to convey the business loca-

tion," and upon this found the contract inseparable and denied the specific performance.

In the case of *LaFrance* v. *Cullen*, 196 Mich. 726, cited in plaintiff's brief at page 201, it was submitted to the jury whether a certain lottery agreement was part of the contract of conditional sale involved. The jury found that it was and therefore the consideration was there void, being unlawful.

Williston on Sales, Vol. 2, Sec. 681, is cited by Counsel. A very pertinent part of the section cited is this: "Even though there are several considerations, some of which are legal, if the legal considerations are not apportioned to corresponding promises the promises are unenforceable."

Williston does not at that place say that if the legal considerations are so apportioned the contract will be enforceable, but he does say that in his work on Contracts, Section 1781, cited *supra*.

The statement made in *13 Corpus Juris, Sec. 471*, cited by Counsel is so clearly stated by that work that we need not discuss it. It is not contrary to our contentions.

(7) The Government's Argument as to the Pioneer and Belgo Claims.

On page 201 of their brief Counsel for the Government enter upon the discussion of a topic which they state in this form:

> "The making of the acquirement of the placer mining claims a part of the consideration was unlawful and voids the whole lease."

In their discussion of this matter Counsel misstate the provisions of the Act of June 4, 1920. They say at page 205:

> "The Act expressly attaches only to territory whereon no placer mining claims exist."

A very cursory reading of the Act of June 4th will show that this is not true. The lands excluded from the jurisdiction of the Secretary of the Navy are first, those on which applications for lease or permit under the Act of February 25, 1920 were pending; second, the lands on which applications for patent were pending. Lands in the naval petroleum reserves not embraced within either of these exceptions are committed to the jurisdiction of the Secretary of the Navy but, in the case here, as shown by the Morgan Report (R. 293-4) and otherwise shown in this record, the Pioneer Oil Company, successor to Societe Belgo Americaine des Petroles du Wyoming, was in possession of the lands. Mr. Morgan states that heavy expenditures were made each year in prosecuting the work ($6,000 expended each year) and further states that there is no doubt but what they will claim the right to the land and resist any attempt to deprive them of it. It is therefore a situation in which the Government did not have unclouded title and right to the lands. The Government was not in possession. Those in possession were claiming rights. Mr. Morgan recommended suit by the Government to quiet the titles. There was no way except by such a suit, for the Government to quiet these titles. Applications for patent had not been made and were not required to be made. The possessors of these claims might retain their possession and without

applications for patent continue in possession and extract all the oil.

Moreover, the Act of February 25, 1920, Section 37, recognized the rights of possessors and provided not only that that Act of February 25th should not take away the rights of such claimants but expressly preserved to the holders thereof "valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, *including discovery.*"

Now, it is true, as Assistant Secretary Finney states, that the discoveries so far as known to the Department, were not such as they recognized as discoveries. It is true likewise that a somewhat different rule was in force in many, perhaps all of the courts. In the courts, the rule was and is that a discovery is only the finding of such oil as will lead a prudent man, not necessarily a miner, to proceed in the hope of finding oil in commercial quantities. The rule in the Department as we understand it, is that on applications for patent the discovery must be of oil in commercial quantities. Whichever rule be applied however, with the statute authorizing the claimant to perfect his claim, "including discovery," the question whether or not discovery had been made prior to the Act of February 25th becomes of no importance. The Government then with its clouded title could not say definitely to the Mammoth Oil Company or to any other applicant for a lease that it could insure to the applicant the right to possession or the right to the oil, nor could it insure that when oil was discovered in commercial quantities by a lessee, if such discovery should be made, either itself—the Government—or the lessee

would be able to retain the lands or the oil as against these occupying claimants.

In this situation the Government contracted with the Mammoth Oil Company for that which it had and nothing more, namely, it agreed that the Mammoth Oil Company should take the lands as they were with the rights of the Government and occupying claimants as they were, but as to such occupying claimants, in order that the Government might not be defeated of all right in the premises, it required that the lessee at his own expense should in some way remove the cloud. And it will be observed that the bill of complaint here makes no claim that the acquisition of these claims in any way reduced the royalty that the Government should receive nor operated in any way as a fraud upon the Government or as any part of the consideration of the lease contract; nor is there anything in the evidence indicating that it was any part of such consideration. The claim in the bill is only that this acquisition was fraudulent in that the requirement was secretly notified to the Mammoth Oil Company and thereby preferential opportunity was afforded it to obtain the lease. The evidence clearly refutes the allegations of the bill so made.

(8) The Government's Argument as to Competitive Bidding.

At page 206 of their brief, Government Counsel argue that the award of the lease and contract was unlawful because without advertisement and competitive bidding and they cite Revised Statutes, Section 3709. Section 3709 obviously does not apply to leases made by the Government nor to the disposition of anything made by the

Government. Indeed there is no general statute of the United States requiring competitive bidding in the sale or other disposition of the Government's property. The very keynote of the Act of June 4, 1920, is discretion. The Secretary of the Navy is given discretion in the disposition of the Government's royalty oil. If he elects to sell the oil, there is no limitation prescribed by the Act as to the price or as to the terms of payment and there is no requirement in the Act or in any general statute that he shall sell by competitive bidding. What then shall be said if he elects to exchange the royalty oil or sell it for something other than money? As we have said, there is no limitation in any statute on the *disposition* end of the exchange. In determining the valuation of the oil to be given in exchange he is not required by statute to follow any particular method. He is limited only within the boundaries of reasonable discretion. If then there is no limitation on the *disposition* end of the exchange transaction, it would be incongruous to have, in the operation of the same statute, limitations on the acquisition end. We submit that Section 3709 can have no application and cannot be applied so as to constitute a limitation upon the discretion of the Secretary of the Navy conferred by the Act of June 4th which Congress did not see fit to impose in that Act itself.

(9) The Government's Argument as to Fuel Depots.

At pages 209-212 Counsel for the Government conclude their brief as to the Mammoth Oil Company by again asserting that the lease and contract contemplated the erection of fuel depots not authorized by Congress

and they cite several passages from the cross-examination of Admiral Robison where they were able by the phraseology of their questions, to put the words "fuel depots" into the mouth of Admiral Robison for the purposes of this record. A reading of the whole testimony of Admiral Robison will show that he meant nothing more than this: That having determined that Naval Reserve No. 3 should be leased because of threatened loss of the Navy's oil by drainage—we repeat, *after* the decision to lease the reserve had been made—he determined that there should be reserved in the lease contract the right in the Government to elect to exchange the royalty oils accruing to it under the lease for fuel oil together with the necessary containers therefor in order to have an above ground reserve in aid of the Navy's national defense plans. Subsequently the Navy Department did so elect to exchange the royalty crude oils accruing from the lease and the supplemental agreement of February 9th, 1923, resulted. Government Counsel may assert the contrary time and time again but they cannot distort the record to support their assertion that the lease of Naval Reserve No. 3 was made in order to realize the Navy's National Defense Plans rather than as a conservation measure. Detached portions of Admiral Robison's testimony cannot speak louder upon this question than does the contract of April 7th itself. That contract which was primarily a lease and secondarily an agreement relating to the disposition of the Government's royalty oil, does not provide for the construction of any storage facilities whatsoever. In connection with the Government's disposition of its royalty oils the contract of April 7th provided that the Government might elect to exchange its

royalty oils for fuel oils and in connection with that right it might further elect to require the lessee to construct such storage tankage as should become necessary or be required for the storage of such fuel oil as the Government elected to receive. But the point we desire to emphasize is that in the contract of April 7, 1922, the Government did not elect to have any storage constructed but merely reserved the right to elect to require the lessee to construct storage. If the parties intended anything further than that, why didn't they put it in the contract? We repeat that Government Counsel cannot by mere assertion, change either the language or intent or character of the contract of April 7th. Note further that if the Government elects to have any storage tankage constructed the contract of April 7th provides that said storage is to be located at points designated by the lessor (R. 26). We respectfully submit that if the supplemental agreement of February 9, 1923, be held to be illegal in that it included an exchange of royalty oils for storage facilities, even as limited in said contract, and that if the option as to storage facilities contained in the contract of April 7, 1922, pursuant to which the supplemental agreement of February 9, 1923, was made, be held illegal, then the option contained in the contract of April 7th may be stricken out and the supplemental agreement of February 9, 1923, may be cancelled, leaving the lease and the other options in respect of the royalty oils to stand. In that event, the Government will still receive as consideration for the lease the stipulated percentages of royalty oils which it agreed would constitute full consideration for said lease and it may still receive for its royalty oils either fuel oil or other oil products or cash

and no matter which it chooses, whether it chooses one of the three, two of the three or all of the three, it will still receive that which in the contract of April 7, 1922, it solemnly agreed would constitute full consideration for such royalty oils.

We respectfully urge that if an illegal option was included in the contract of April 7, 1922, for the Government's benefit, then it is not equitable to permit the Government to take the position that because such option is illegal it has a right to avoid the whole contract where there are alternative and therefore severable options which are entirely legal and valid.

Examples of Erroneous Statements of the Evidence Contained in Appellee's Brief.

(References are to pages of Appellee's Brief.)

Page 6. Appellants do not limit the issue of fact under the charge of fraud and conspiracy made in the bill to the question whether the lease was made for an inadequate and improper consideration. That limitation was placed there by the appellee's Counsel who drafted the bill. An examination of the bill will show that there is no allegation of fraud other than that the lease was granted upon an improper and inadequate consideration.

That the case went off in the Court of Appeals solely on an issue of bribery is apparent from a reading of that Court's opinion. All the incidents referred to by the appellee were taken by the Court of Appeals to satisfy it of Sinclair's connection with the Continental Trading Company and the acquisition of Liberty Bonds by Everhart and Fall—in other words, bribery.

Pages 12 to 23. Here an effort is made to foreclose a discussion of the legal issues present in this case by an assertion that those legal issues have been decided by the Pan American Case. The Record facts in this case show that no lease would have been made had there not been an honest fear that damage would result to the reserve by reason of drainage. No minimizing of the testimony of Bain, Ambrose and Robison can lessen the conviction that these men against whom no charge of fraud or suspicion is made, honestly believed that the oil in Naval Reserve No. 3 was being endangered by drainage by virtue of the operations then and that were to be carried on in the Salt Creek Field. The testimony shows (R. 663) that Bain and Ambrose advised that mere strip leasing would not protect the reserve. It was not their function to determine what kind of a lease should be made or in fact, how much of the land should be leased, that was an administrative question to be determined by the Secretary of the Navy. There is no evidence in this Record that the Secretary of the Navy acted otherwise than by honest motives fully believing that the advice he had as to drainage justified him in deciding that the reserve should be leased and in that way protected. Robison testified that before he outlined the terms of the lease, he had received information at the conference with Bain and Ambrose who told him that the Wegemann Report was confirmed, that there was grave danger of the property being seriously damaged by drainage and that fact as to the serious danger of damage moved him in this conference to decide finally that they would lease the whole reserve (R. 607-8). Having decided to lease the reserve because of threatened damage by virtue of

drainage the motive is not impaired because in the negotiations for a lease certain provisions were insisted upon that would be of advantage to the Government, but without cost to the Government.

Page 22. Appellee suggests that it was not until the full scheme of development of the reserve was suggested that the fears of drainage became acute. This is in harmony with the manner in which Government Counsel seek to give an incorrect view of the evidence by stating facts in other than their actual sequence. The Record is clear and convincing that no thought of developing the entire reserve was suggested until Robison and Denby were advised by Bain and Ambrose that the reserve would be endangered by drainage by virtue of operations in the Salt Creek Field. Not until Denby and Robison were convinced of that danger was any suggestion made of the manner of development, terms of the lease, or how it should be accomplished. There is absolutely no basis in the Record for the statement made by the Court of Appeals and quoted by Counsel at page 22. Robison testified (R. 629), that "prior to this day late in January (1922) Secretary Fall had said to me he didn't think that the leasing of this reserve could be done and should be done." That the determination to lease was made subsequent to the advice about drainage and not before is further apparent from Robison's testimony in reference to the conference in January, 1922: "I think Dr. Bain brought up the question of Teapot Dome. He said, in effect, in substance, that the reports from the field were that the drainage of Teapot Dome was existing and that serious drainage was dangerously probable. Ambrose

echoed his remark. Secretary Fall said, 'What are you going to do about it?' and I said 'I certainly am not go-going to repeat the disaster we had in California. We have got to develop Teapot Dome' " (R. 645).

Pages 27-28. Under the heading on page 27 appellee's brief entitled "Secretary Fall Takes Full Charge and Control of Naval Petroleum Reserve Matters", counsel seek and sought in the Court of Appeals to impress the truth of this statement by reference to a letter written by Secretary Fall to E. L. Doheny dated July 8, 1921. Once and for all let it be understood that this letter had no reference whatever to anything that was done or contemplated to be done in reference to Naval Reserve No. 3. The Record (277,313) shows that the subject matter of the letter had reference to some friction or discord that arose between the Secretary of the Interior and several subordinates in the Navy Department in reference to controversy with the Midway Oil Company and the Pan American Company relating to rights under certain placer mining claims in one of the California reserves. The determination of this controversy was solely within the power of the Secretary of the Interior under the Act of February 25th, 1920. Notwithstanding, it is seized upon here by Government Counsel and put in a false light for the purpose of showing an attitude on behalf of Fall that this Record fails to show he ever assumed.

Furthermore, on page 28 Government Counsel quote paragraph 7 of the letter of October 25th written by Secretary Denby to Fall in which he says:

> "7. That all leases and contracts except as provided in paragraph 6 would be arranged and

consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only."

Government Counsel are careful not to quote the testimony of Robison in reference to the intent and meaning of this paragraph. The Record shows (617) that Robison drafted this letter and what was intended was that leases and contracts in reference to the lands within the Naval Reserves that were under the exclusive jurisdiction of the Secretary of the Interior should be administered solely by the Secretary of the Interior under the Act of Feb. 20, 1920 (R. 575-6), and this for the reason that there had been some conflict between the Navy and Interior Departments in reference to the nature of settlements made with the claimants of placer mining claims within the reserves.

Page 31. Every effort is made here to minimize the testimony of Bain and Ambrose in reference to drainage and to make it appear that Robison investigated the possibility of drainage after he had been advised by Bain and Ambrose. This is not correct. Robison did not purport to make any independent investigation of drainage so far as this Record shows after he had been advised by Bain and Ambrose. He relied upon their advice as he had a perfect right to do and we submit that the advice they gave at the conference in January, 1922, warranted any prudent executive in taking steps to prevent loss of oil by virtue of the drainage that would inure through operations in adjacent fields.

At page 32 Counsel say Sinclair and Zevely arrived at Three Rivers, New Mexico, to consult Fall about a

business matter, that they took advantage of the occasion to discuss the leasing of the reserve. This leaves a false impression. The business mission that took Zevely and Sinclair to New Mexico was in reference to Osage leases (in Oklahoma) (R. 323), and there was no real discussion about Teapot Dome except an inquiry by Sinclair of Fall if the Teapot Dome was to be leased (R. 323).

Page 35. Counsel seek to belittle the advice that Bain and Ambrose gave to Robison on the question of drainage at the conference which took place in January, 1922. As it was this advice that actuated the Navy Department to lease the reserve we earnestly invite the Court's attention to the testimony of Bain (R. 663-6, 693-4); Ambrose (R. 707); Robison (R. 575, 583-4, 605, 607, 645-6); in reference to this important conference.

Page 37. Counsel for the Government seek to leave the impression that Ambrose in his written report of February 18th on the question of drainage covered all the details in the information that he gave at the conference in January. This is not correct. Ambrose testified "The report is the very brief factor—the conclusions regarding drainage. It does not amplify, in any way, the question of gas pressure, water levels, structure contours, thickness of sand, depletion of production, depletion of gas, active work on the nearby leases in the southern end of Salt Creek and those other factors upon which you must base your conclusions for the report on the subject of drainage and those factors were, I believe, discussed in Secretary Fall's office" (R. 709).

At page 38 Counsel seek to give the impression that Robison in outlining to Sinclair what the Navy would in-

sist upon in a lease negatived our contention that the motive for the lease was conservation or drainage. This is not true. Robison testified "he told me to set forth to Mr. Sinclair in as much detail as possible, what we would need. There had been no discussion theretofore of what we would need except between Secretary Fall and me on the date of the conference late in the month of January when I told Fall that I would not consider any lease unless it included a pipe line. I came ultimately to that conclusion at that conference late in January when we were all of us talking and giving or exchanging information. I then set forth my ideas and told Fall that they depend upon the approval by the Secretary of the Navy. Before I laid out those terms I had received information at the conference from Dr. Bain and Mr. Ambrose who told me that the Wegemann report was confirmed and that there was grave danger of the property being seriously damaged by drainage and that fact as to the serious danger of drainage from drainage to Reserve No. 3 moved me in this conference to decide finally that we would lease the whole reserve—that in connection with our experience with other reserves (R. 607-8).

Page 39. There is absolutely no basis in the Record for the statement that Sinclair must have discussed the Pioneer claim with Fall or that Fall's statement must have been the genesis of his, Sinclair's proposition.

Page 40. Ambrose's memorandum did not negative the necessity for making a lease. In fact both Bain and Ambrose recommended that leasing should be done to protect the property (R. 666).

At page 48 Government Counsel seek to give the impression that Beaty's proposition was as good as Sin-

clair's. Bain testified: "It was Ambrose's judgment and mine that the Sinclair royalties would bring in more royalty to the Government because they were higher royalties on everything above 100 barrels and at that time we were very confident of getting larger wells there" (R. 668).

At page 50 Government Counsel seek to give a false impression by stating that Robison expressed the view that the Texas Company had no chance to compete. Robison explained this remark at (R. 653) and said "that if the Texas Company had them put in a proposition which was superior to the one we had gotten from Sinclair it would have been accepted but there was not much chance of any such thing being done. By that expression I meant we felt at that time that we had made some pretty good terms and incorporated them into the tentative contract with the Sinclairs, terms that gave us better than normal royalties, that gave us some rather extraordinary facilities and that involved the necessity of utilizing, in an indirect way, it is true, the entire Sinclair organization, marketing, etc., and I did not think that better terms would be arranged."

Pages 50-52. In discussing the testimony of Hirsh Helms, Counsel cautiously avoid or omit to show that there was confusion in the minds of Helms and Fall as to what Helms was seeking, Fall believing that Helms had in mind the purchase of the royalty crude oil in Salt Creek (R. 387).

At page 57 Counsel eager to show that it was decided between March 1-10 that Sinclair should have the lease referred to Robison's testimony (R. 614). Robison testified (R. 614-5): "It is my recollection that Secretary

Fall and I determined that Sinclair should have a lease when we found out that his was the best offer that we could get and that was somewhere in the early part of March between the first and the tenth." That he was mistaken in the date is apparent from his testimony (R. 652-3), wherein he said "It was finally determined that the offer of Sinclair would be accepted after we got that telegram from Beaty (April 5) that indicated that he was not going to give us what we wanted."

Page 62. The mere fact that operations under the lease were not commenced for 180 days is no indication that the parties did not believe that drainage was taking place or imminent. Such a development as contemplated could hardly be undertaken in any less time, roads had to be built, water wells drilled, camps constructed, etc., all preliminary to active drilling operations and this at a site approximately 40 miles from the nearest railroad. Nor does the fact that 20 test wells were to be drilled in various parts of the reserve indicate that the parties did not believe that drainage would take place. In order to properly conserve the property, using the word "conserve" in the sense of preventing drainage, it was necessary to locate by drilling the extent of the water levels, the extent of the gas area and the extent of the oil bearing sands. This could not be done merely by concentrating the 20 test wells to be drilled in the northern part of the field. In order to properly protect against drainage it was more essential to locate where the gas was that was forcing the oil through the sands than it was to drill numerous wells in the northern part of the field. The test wells merely defined the property and by equal-

izing the gas pressure would prevent the forcing of the oil out of the reserve. The drilling of all the test wells in the north end of the field would be equivalent to strip leasing or merely the drilling of off-set wells. Bain and Ambrose advised Robison in a conference in January that strip leasing would be no protection against drainage (R. 663).

Page 65. Counsel say Robison gave no weight to the recommendation of the Heald Report "that no further leasing should be done in Reserve No. 3." Heald made no such report. He said that no further leasing should be done and it was manifest from his report that he meant that no further leasing should be done on lands adjacent to the reserve, for he was there and then speaking about wells that would be drilled in the lands that had been leased in the southern part of the Salt Creek Feld and adjacent to the northern part of the reserve (R. 318). They quote Tallman as a geologist when the testimony shows he was not a geologist but an Assistant Attorney in the office of the Solicitor of the Interior Department (R. 333). His expression of opinion from a geological or operating point of view is therefore not entitled to weight. Emphasis is laid on the fact that neither Ambrose nor Bain or the Bureau of Mines were requested to recommend the quantum, the order or character of leasing to be done in Teapot Dome. This, of course, was an administrative question clearly outside their duties although they did insist that some leasing should be done if the reserves were to be protected, but they did recommend that there was danger of drainage (Bain, R. 663-6, 693-4; Ambrose, 707).

Page 68. Ambrose did not say, as quoted by Government Counsel, that his early report did not differ from his written report of February 18th, 1922. At R. 709 he shows how his written report did not amplify the many things that were discussed in the early conference.

Page 68. Robison did not testify as quoted in substance by Government Counsel that he decided not to investigate because of the existence of a national emergency but he merely stated that he did not take the time to examine the question of drainage as he might have done had there been no emergency in the matter. Appellants did not seek, as Government Counsel contend, to give the impression, that the data compiled by Bain in March, 1922, was given in that identical form to Fall and Robison in January, 1922, but the Record shows that the facts that Bain and Ambrose gave to Robison and Fall in January, 1922, were the essentials of what was incorporated in Bain's memorandum of March, 1922.

Page 69. It is stated that Fall, notwithstanding that he had reports of Heald, Tallman and Ambrose determined to lease the reserve. This is incorrect. Fall never determined to lease the reserve and the Record is destitute of any proof of that fact. On the contrary, it does show (R. 645), that after Ambrose and Bain had advised Fall and Robison of the danger of drainage, Fall said to Robison "What are you going to do about it" and Robison then said, in substance: I am not going to let Naval Reserve No. 3 be lost in the manner in which the California reserves were lost, we will have to lease. So it was Robison acting for Denby, and Denby, after Robison had advised him of the facts, determined to lease and not Fall.

Page 71. Counsel for the Government charge us with ignoring what they claim to be a fact that if the oil was drained out of Teapot Dome into the Salt Creek Field the Government would have received higher royalties under the existing Government leases in the Salt Creek Field. Even assuming this to be true, the Navy would receive no benefit from such royalty.

Page 74. There is no foundation in the Record for the statement that the acquisition of the Pioneer claims by Sinclair was entirely a matter of private negotiation between Fall and Sinclair.

Page 75. Neither Fall nor the Government gave one cent for the Pioneer claims. The consideration was paid by Sinclair and cost the Government nothing.

Page 80. A good deal of stress is laid upon the fact that Fall locked the lease in the drawer of his desk and gave the key to Stafford, his Administrative Assistant with instructions not to make the lease public. Manifestly what Fall locked in his desk were duplicate copies of the lease because on the day that he is supposed to have locked the lease in his desk the Record shows that he sent a triplicate copy to Denby (R. 286, 287).

Pages 90 and 91. Counsel seek to give the impression that the two letters referred to on those pages of their brief were signed by Secretary Fall. The letter on Page 90 is dated March 9th, 1922, and signed by Finney and there is no evidence that he wrote the letter at Fall's request (R. 412-13). The letter set out at page 91 is likewise signed by Finney and dated November 28th, 1921 (R. 409).

Page 93. Whether there was any need from a military standpoint for secrecy is beside the question. The testimony shows that matters from the Navy were generally secret and that was the only reason for treating the matter as confidential (R. 341).

Under the title "Wilful Disregard of Competent Legal Advice" Counsel seek to give the impression that attorneys for other oil companies passed upon the legality of the lease here in question. This is not true. There is no testimony whatever that the attorneys for the oil companies to whom was submitted the Pan American contract ever purported to give an opinion as to the validity of the Mammoth lease.

Page 97. Counsel state that July 8th, 1921, Fall was boldly proclaiming that he would handle matters pertaining to Naval Petroleum Reserves exactly as he thought best. This statement is based upon Fall's letter to Doheny of July 8th, 1921, which, we repeat, had no reference whatever to Naval Reserve No. 3.

Page 99. There is no evidence whatever in the Record that Fall and Sinclair privately conferred about Sinclair's proposition of February 3d, 1922, or that they conferred in any way about it.

Page 100. Again counsel refer to the fact that Fall locked the lease in his desk on April 13th and that he felt it necessary to write Denby a memorandum as to the terms of the lease as showing Fall's dominance in the negotiations. We have already adverted to the fact that

the most he could have locked in his desk were the copies thereof that were intended for his Department as he had theretofore on April 12th forwarded a copy of the lease to Denby.

Page 101. The Court of Appeals found that the lease in issue was a contract of the Secretary of the Navy. Whatever negotiations Fall conducted were but the acts of a subordinate; the execution of the contract was the vital thing and no contract came into existence until signed by Denby. Whatever Fall's wishes may have been he could not have accomplished any end he had in view irrespective of the wishes of anyone else as stated by Government Counsel. All his wishes, if any he had, other than to make a good lease for the Navy, could have been smashed and thrown out if it had not been the wish of Denby to have for the Government the contract that was executed. The Record shows that Denby went over the contract paragraph by paragraph and only signed it after he felt that it was a good contract for the Government. How then can Government Counsel say that Fall accomplished his wishes irrespective of the wishes of anyone else?

Pages 102-3. No assertion by Government Counsel that Denby was merely submissive to the wishes of Fall can change the fact that two Courts have found that Denby retained and exercised through Robison, his subordinate, sufficient control to make these contracts his contracts. His submissiveness was not expressed in the policy letter of October 25th as contended for by Counsel for as we have already explained, the paragraph of

that letter referred to by Government Counsel, had reference to leases and contracts exclusively within the jurisdiction of the Interior Department. The fact that Robison acted for Denby, prepared letters for him, that Denby did not attend any conference, that his subordinate in the matter Fall sent him a memorandum of the contract points to nothing except the desire of the Government Counsel to seize upon nothings. For it is well known that all executives must act through subordinates in the discharge of the details of their office.

Page 106. Counsel contend that Denby was deceived as to the necessity for the lease from the standpoint of drainage and as to the method of negotiation. By whom, may it be asked, was he deceived? It is not charged in the bill, much less proved as a fact, and not even intimated in the brief of the Government, that Bain and Ambrose, who advised Robison of the danger of drainage were not actuated by an honest motive, that they were not competent or that their advice was the result of intimidation. Certain it is that the Record does not show that Fall advised Denby as to drainage other than he asked the officials in the Bureau of Mines to report to Robison the results of their investigation as to drainage and as to the method of negotiation. There is no evidence in the Record whatever that Denby was deceived by the method of negotiation. On the contrary, the evidence shows that Denby relying upon Robison was kept in close touch with negotiations day to day by Robi-

son. Robison was in constant touch with Fall and Robison does not testify that he was deceived in any way by negotiations by Fall, Sinclair or anyone else.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 719.

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY and SINCLAIR PIPE LINE COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

SEPARATE BRIEF ON THE MERITS ON BEHALF OF PETITIONER MAMMOTH OIL COMPANY.

Official Reports of the Opinions Below.

The Opinion of the District Court of the United States for the District of Wyoming herein, is reported in 5 Fed. (2d) 330-354. See also R. 226-271.

The Opinion of the United States Circuit Court of Appeals for the Eighth Circuit is reported in 14 Fed. (2d) 705-733. See also R. 794-851.

The Jurisdiction.

Through the granting of a joint and several petition for certiorari to the United States Circuit Court of Appeals for the Eighth Circuit prayed by the Mammoth Oil Company, the Sinclair Crude Oil Purchasing Company and the Sinclair Pipe Line Company, this cause is here for decision on the merits under paragraph (a) of Section 240 of the Judicial Code (U. S. Code Sec. 347). The decree of the court below was entered October 12, 1926 (R. 852).

STATEMENT OF THE CASE.

The suit is in equity begun in the United States District Court for the District of Wyoming on March 13, 1924, against Mammoth Oil Company and others by the United States of America. As concerns Mammoth Oil Company, the object and prayer of the bill is to cancel (with resulting accounting) certain contracts, as follows:

The primary and basic contract involved is a lease dated April 7, 1922, whereby the United States leased to Mammoth Oil Company Naval Petroleum Reserve No. 3 in Wyoming in consideration of the lessee's promise to develop the lands and to pay to the lessor royalties in the form of stipulated percentages of the oil produced.

In the instrument dated April 7, 1922, there is a collateral agreement relating to the disposition by the Gov-

ernment of the royalty oils accruing to it under the lease. That agreement permits the lessor to choose as to the equivalents to be received by way of compensation but leaves the amount of the compensation fixed and determined.

As indicated above, the medium in which the compensation is to be paid, is left to the option of the lessor—the Government. The lessor is permitted to choose and, in accordance with such choice, to receive as payment of the fixed compensation, (1) cash; (2) fuel oil; (3) other oil products suitable for use by the Navy; (4) such an amount of tankage as may be necessary for the conservation by the lessor of such fuel oil as it may elect to receive from the lessee in exchange for royalty crude oils accruing to it from the lease.

The contract of April 7, 1922 does not provide for any fuel depot or for any designated storage project. Nor does it authorize an exchange of royalty crude oils from the lease or from any other lease for the construction of storage facilities generally.

Having given the Government an option to exchange royalty oils accruing to it under the lease for fuel oil, it couples with said option—and makes said option effective to consummate the purpose and policy of administering the naval petroleum reserves for the use or benefit of the Navy—the further option to exchange royalty oils for such storage as is required to conserve the fuel oil so received. The matter is shown in the contract by the following language:

> "The lessee agrees, if and when requested so to do by the lessor, to construct or to pay the cost of construction of steel storage tankage up to but *not in excess of such an amount as shall be estimated*

to be necessary or required for the storage by the lessor of the fuel oil to be received by it as hereinbefore provided in exchange for royalty crude oil from the lands hereby leased; said storage to be constructed *as and when* the same shall become necessary or shall be required for the storage of such fuel oil so delivered by the lessee or its nominee, *and said storage to be located at points designated by the lessor;* the cost of such tankage to be liquidated by lessor by delivering to the lessee or its nominee crude oil certificates hereinbefore referred to, said certificates so delivered to be of the face amount in value equal to the cost of such tankage for which the lessee or its nominee shall have paid or become liable." (Italics supplied) (R. 26).

In other words, the storage authorized by option "4" as enumerated above, is limited by the extent to which option "2" is exercised, and option "2" is limited to an exchange for fuel oil of the royalty crude oil *accruing under this particular lease*. The whole matter is thus shown to have been designed as a method of effecting the conservation of the oil in Naval Petroleum Reserve No. 3 for the use or benefit of the Navy. In no feature does the contract overreach or depart from that policy.

In addition to the lease and agreement incorporated in the instrument dated April 7, 1922, the suit seeks to cancel a supplemental agreement between the parties dated February 9, 1923, made at the request of the Government—at the instance of the Navy Department (R. 595)—pursuant to options "2", "3" and "4" above enumerated contained in the contract of April 7, 1922. That is to say, the Secre-

tary of the Navy elected not to take cash for the Government's royalty crude oils as he might have done under option "1" but rather to exchange the royalty crude oils for fuel oil and other oil products suitable for use by the Navy, together with tanks necessary for the conservation thereof. In this supplemental agreement the Navy adopted a program of four projects, designating the amounts of fuel oil and other products it desired in respect of each project and designating the places for the construction of the storage necessary in respect of each such project. The first project was to be commenced forthwith, certain royalty oils having then accrued to the Government under the lease. The other projects were to be undertaken one after another as, if and when the royalty oils accrued sufficient to furnish by exchange the fuel oil and other products desired in respect of each project, thus effectuating the purpose to erect only such storage as might be necessary to conserve the fuel oil and other products received in exchange for the royalty crude oils accruing to the government from the lease of April 7, 1922, but not from any other lease.

The Issues.

Paragraphs one, two and three of the bill designate and describe the parties (R. 2 and 3). The answer admits (R. 56, par. 1, 2 and 3).

Paragraphs four, five and eight of the bill describe the lands involved; allege that they are owned by the United States, that they contain large quantities of petroleum, that they have been set aside as a naval oil reserve, and that they are included among the lands described in the Act of

June 4, 1920 (R. 3, 4 and 5). The answer admits (R. 56, 57, par. 4, 5, 8).

Paragraph six of the bill alleges that from March 5, 1921 to March 4, 1923, Albert B. Fall was Secretary of the Interior and Edwin Denby was Secretary of the Navy of the United States (R. 4, 5). The answer admits (R. 57, par. 6).

Paragraph seven of the bill quotes the Act of June 4, 1920 (R. 4, 5; also 41 U. S. St. L. Chap. 228, pp. 813, 814). The answer admits (R. 57, par. 7).

Paragraphs nine, ten, eleven and twelve of the bill allege the making of an Executive Order of May 31, 1921, by the President of the United States assigning the Secretary of the Interior to certain duties in relation to the naval petroleum reserves; allege that the same was illegal and obtained by Secretary Fall by fraud (R. 5, 6; also Ex. A. R. 13, 14). The answer admits that the order was made and denies the other allegations (R. 57, 58, par. 9, 10, 11, 12).

Paragraph thirteen of the bill alleges the execution of the lease on April 7, 1922 and sets forth a copy marked "Exhibit B" (R. 6; also 14-36). The answer admits (R. 58, par. 13).

Paragraph fourteen of the bill alleges that the lease, Exhibit B, was "without authority in law" (R. 6). The answer denies (R. 59, par. 14).

Paragraph fifteen of the bill alleges the execution on February 9, 1923 of the supplemental agreement and sets forth a copy marked "Exhibit C". It further alleges that said contract was without competitive bidding and was

therefore illegal, null and void (R. 6; also 36-52). The answer admits the execution of the supplemental agreement on February 9, 1923 and that it was without competitive bidding and denies the rest (R. 59, par. 15).

Paragraph sixteen of the bill alleges that the Mammoth Oil Company has taken possession of the lands under the lease and is operating the same, and that it is a trespasser (R. 6, 7). The answer admits taking possession and operating but denies the rest (R. 59, 60, par. 16).

Paragraph seventeen of the bill alleges that the Mammoth Oil Company has proceeded with the construction of storage facilities under the supplemental agreement and has been paid therefor in oil certificates (R. 7). The answer admits the construction of certain storage facilities but denies that the defendant has been paid therefor, and alleges that it expended in such construction more than one million dollars, and that the improvements were made on the premises of the United States and are of a value to the United States of more than the amount expended (R. 61, 62, par. 17).

Paragraph eighteen of the bill alleges generally that Secretary Fall and Harry F. Sinclair conspired to defraud the United States by the execution of the lease and performed acts resulting in its execution (R. 7). Although this seems not to state any facts, the answer denies the conspiracy, and denies that the execution of the lease was the result of any conspiracy or for any purpose of defrauding the United States (R. 62, par. 18).

Paragraph nineteen of the bill alleges that the negotiations preliminary to said agreement were conducted on behalf of the United States by Secretary Fall (R. 7). The

answer denies and alleges that the negotiations were conducted on behalf of the United States by Secretary Denby and that in connection with such negotiations Secretary Denby made use of the services of officers of the United States Navy and of Secretary Fall and of certain of the bureaus and personnel of the Interior Department, and that all negotiations preliminary to said agreement were conducted under the supervision and control of the Secretary of the Navy (R. 62-63).

Paragraph twenty of the bill alleges that the negotiation and conclusion of the contracts were private and secret negotiations and agreements between Secretary Fall and Mr. Sinclair (R. 7, 8). The answer denies (R. 63).

Paragraph twenty-one of the bill alleges that the lease of April 7, 1922, "Exhibit B", was awarded without competitive bidding and that the agreement contained therein to sell the royalty oils was without competitive bidding. It further alleges that the lease was without authority of law (R. 8). The answer admits that there was no competitive bidding but denies the rest (R. 63, par 21).

Paragraph twenty-one likewise alleges that the supplemental agreement of February 9, 1923, "Exhibit C", was without competitive bidding and was without authority of law (R. 8). The answer admits that there was no competitive bidding but denies the rest (R. 63, par. 21).

Paragraph twenty-two of the bill alleges that the Secretary of the Navy exercised no discretion in relation to the contracts (R. 8). The answer denies (R. 63, 64; par. 23).

Paragraph twenty-three of the bill alleges that others desired to obtain leases on the lands but were denied the

opportunity by Secretary Fall with knowledge thereof in the defendant Mammoth Oil Company (R. 8). The answer denies (R. 64, par. 23).

Paragraph twenty-four of the bill alleges refusal by Secretary Fall to take the opinion of the Solicitor of the Interior Department or of the Attorney General as to the legality of the contracts (R. 8). The answer denies knowledge of any such refusal (R. 64, par. 24).

Paragraph twenty-five of the bill alleges that Secretary Fall, as a condition precedent to granting a lease upon the lands, required quitclaim deeds for mining claims upon the lands, knowing that they were worthless, and secretly gave information thereof to Mr. Sinclair and thereupon Sinclair obtained deeds from the mining claimants, thus fraudulently making it impossible for others to comply with the requirements (R. 9). The answer denies (R. 64-66, par. 25).

Paragraph twenty-six of the bill alleges that Secretary Fall required Mr. Sinclair, as a condition precedent to the obtaining of a lease, to set aside a certain part of the lands for the benefit of one Shaffer (R. 9). The answer denies (R. 66, par. 26).

Paragraph twenty-seven alleges that Secretary Fall fraudulently kept the lease secret from his associates and from Congress and from the public before it was executed and for a considerable time after (R. 10). The answer denies (R. 66, par. 27).

Having averred generally in paragraph eighteen of the bill that Secretary Fall and Mr. Sinclair conspired to defraud the United States by the execution of the lease, and

having devoted paragraphs nineteen to twenty-seven inclusive to averments of things done pursuant to such fraudulent conspiracy, paragraph twenty eight is again a general averment of a conspiracy to defraud the United States by granting the lease in violation of law and upon "an inadequate, improper, and fraudulent consideration" (R. 10). The answer denies (R. 66-7, par. 28).

> "The words 'fraud' and 'conspiracy' alone, no matter how often repeated in a pleading, cannot make a case for the interference of a court of equity. Until connected with some specific acts for which one person is in law responsible to another, they have no more effect than other words of unpleasant signification. While in this case the offensive words are used often enough, the facts to which they are applied are not such as to make the defendants answerable to the complainant for the damages and other relief he asks."
>
> *Ambler* v. *Choteau*, 107 U. S. 586, 591.
> *Van Wyck* v. *Winston*, 115 U. S. 228.

If it was lawful for Secretary Fall to carry on negotiations preliminary to the lease under the provisions of the Executive Order; if it was lawful to conduct such negotiations without publicity; if it was lawful to make the contracts without advertisement or competitive bidding; if it was lawful for Secretary Fall not to ask the opinion of the Attorney General as to the legality of the lease; if it was lawful for him to make quieting of certain claims a condition precedent to the lease; then all these matters, not being fraudulent in and of themselves, do not create liability to

civil action because done under a conspiracy, even if such a conspiracy were proved. As Cooley so well states the principle:

> "A conspiracy cannot be made the subject of a civil action unless something is done under it which without the conspiracy would give the right of action."
>
> *1 Cooley on Torts, Third Edition, p. 210.*

All the averments of fraud and conspiracy made in the bill amount, therefore, to no more than that the lease was made for an inadequate and improper consideration. The averments of the bill may therefore be summarized as follows:

A Summary of the Issues.

It is alleged on the one part and denied on the other:

1. That the contracts are invalid (a) because there was no authority in law for their execution; (b) because their negotiation was in violation of law in that it was without competitive bidding; (c) because pursuant to the Executive Order Secretary Fall negotiated the contracts and the Secretary of the Navy took no part.

2. That the lease is fraudulent because granted upon an improper and inadequate consideration.

Trial, Evidence and Findings.

In this brief we will, for brevity and convenience, speak of the United States District Court for the District of Wyoming as the "District Court" and of the United States

Circuit Court of Appeals for the Eighth Circuit as the "Court of Appeals".

The cause was tried in the District Court, beginning March 9, 1925, and continuing for three weeks, and resulted in a decree dismissing the bill on the merits (R. 271). The Court of Appeals reversed the decree of the District Court and remanded the cause with instructions "to enter a decree (a) cancelling said lease and contract as fraudulent, (b) enjoining appellees from further trespassing upon the lands of appellant described in said lease; and (c) providing for an accounting on the part of the appellee Mammoth Oil Company, for the value of all oil and other petroleum products taken under said lease and contract" (R. 851).

Of the issues as above summarized, 1(a) is a mixed issue of law and fact; 1(b) is an issue of law; 1(c) is an issue of fact; 2 is an issue of fact.

As to the issue of fact and law, 1(a), and as to the issue of law, 1(b), the Court of Appeals seems to have concurred with the District Court. The language of the Court of Appeals in that matter is as follows:

> "We content ourselves with saying that on this branch of the case, as at present advised, we are in accord with the conclusion reached by the trial court, that the authority granted by the Act of June 4, 1920 is sufficient to authorize the lease and contract in question" (R. 816).

On the issue of fact, 1(c) above, the evidence showed that Secretary Denby was from the beginning advised of all steps in negotiating the contracts and signed

them with full knowledge of all matters contained therein. That evidence will be referred to in detail later. Upon it the District Court found (R. 272) that the contracts were the contracts of the Secretary of the Navy, and in this conclusion the Court of Appeals concurs (R. 815). On the issue of fact numbered 2 above, the adequacy of the consideration for the lease, the evidence of John McFadyen, George K. Thomas, Gerald Hughes, Judge Amos L. Beaty, Dr. H. Foster Bain, Arthur W. Ambrose and Admiral Robison was that the lease was very advantageous to the United States, and no witness testified to the contrary. Upon this evidence which will likewise be referred to more in detail later, the District Court found that the consideration was adequate (R. 248) and the Court of Appeals does not dissent from that conclusion but apparently concurs (R. 817).

It is seen, therefore, that as to the issues raised by the bill, both courts below concurred in the findings of fact as well as in the conclusions of law. As will be shown later (*infra*, p. 38) the Court of Appeals decided the case against petitioners upon a charge not made in the bill. In stating the charge and the manner in which it arose, the Court of Appeals says:

> "There is no charge of corruption in this case as to any of the officials of the Government, except as to former Secretary of the Interior, Albert B. Fall. * * * Counsel for the United States charge in their brief that Mr. Sinclair received as dividends from the Continental Trading Company, Ltd., $230,500 face value of United States Liberty First 3½% Bonds, which he turned over to Secretary Fall in May, 1922 as a bribe" (R. 816).

The Evidence Is Not Conflicting.

Upon the question of conflicts in the evidence, the District Court says:

> "While one basis of the relief sought revolves around and is determinative solely upon the surrounding facts, a rather unusual situation exists in the case in that there are scarcely any of the facts and circumstances in dispute, each party relying upon its own combination of facts to sustain its conclusions as to what inferences should be drawn therefrom" (R. 228, line 42, to R. 229, line 4).

Upon the same point the Court of Appeals uses this language:

> "Here the Appellate Court is not at the usual disadvantage which prevails when the trial Court determines the facts. The views of the trial Court are not controlling as the situation presents, not so much a dispute as to the evidence or the veracity of witnesses, as it does an opportunity for differences of opinion with respect to the inferences to be drawn from all the circumstances appearing in the record" (R. 818, lines 25-31).

Statement of Facts.

1. (a) *Facts in Relation to the Act of June 4, 1920.*

As bearing upon the issue of law 1 (a) above, namely, that the contracts are invalid because there was no authority in law for their execution, we deem it helpful to set forth briefly some of the matters which Congress must be

presumed to have had in mind in the enactment of the Act of June 4, 1920.

In 1909 and 1910 large tracts of public oil lands in the States of California and Wyoming were by presidential orders withdrawn from entry under the placer mining laws in aid of proposed legislation, upon the suggestion of the Director of the Geological Survey as to the lands in California that at the rate said lands were being patented, all would be taken in a few months and that in view of the increased use of fuel oil by the Navy, there appeared to be immediate need for conservation. In 1912 some of the withdrawn lands in California were by executive orders set aside as Naval Petroleum Reserves Nos. 1 and 2 "for the exclusive use or benefit of the United States Navy" until said orders should be revoked by the President or by Act of Congress. *Pan American Petroleum & Transport Co. et al. v. United States*, decided by this Court February 28, 1927.

Although the lands in Wyoming included in the withdrawal orders of 1909 and 1910 were withdrawn solely that a better disposition of them could be made than was provided by the existing laws, there being no suggestion by the Director of the Geological Survey that such Wyoming lands would ever be needed for a naval oil supply, subsequently a tract of approximately nine thousand acres was by a presidential order dated April 30, 1915, similarly dedicated to the use or benefit of the Navy as Naval Petroleum Reserve No. 3.

The withdrawal orders of July 2, 1910, made by the President pursuant to the Act of June 25, 1910 (36 Stat. 847), embraced practically all public lands believed to

be oil-bearing. From that date until the enactment of the General Leasing Law (41 Stat. 437), the United States was without a policy as to its oil lands except the policy in respect of the naval petroleum reserves fixed by the orders creating them. During this entire period, however—year after year—the subject was before Congress and was exhaustively considered and debated. The policy finally agreed upon and embodied in the Act of February 25, 1920, was that of leasing, which will lead as inevitably to taking all the oil out of the public oil lands covered by the Act, as would have the policy of practically giving the lands away under the placer mining law.

Most private owners prefer to lease oil lands for royalties rather than incur the risks and expense of operating directly and Congress adopted the same policy for the United States. The royalties are, of course, compensation for the entire interest of the landowner.

The Act of February 25, 1920 recognized the rights of *bona fide* claimants under the placer laws by granting to them a preferential right to lease, also preserving the right to perfect their claims under the placer laws, "including discovery." This included the naval petroleum reserves. Claimants who had obtained "producing wells" on lands in the naval petroleum reserves, in addition to their right to proceed under the placer mining laws (Section 37), were entitled to lease of such wells together with an area of land sufficient for the operation thereof and in the discretion of the President the remainder or any part of the claims upon which such producing wells had been drilled (Section 18). Furthermore, the President was given the right to com-

promise and settle disputed placer mining claims within the reserves by exchange or division of land or division of the proceeds of operation (Section 18-a). The Secretary of the Interior was charged with the duty of administering the Act of February 25. The Secretary of the Navy had no authority or power whatever under that act.

Congress, except as above, excluded the naval petroleum reserves from the operation of the Act of February 25, leaving the reserves for further and special legislation.

It was immediately recognized that such further legislation was desirable and necessary if the Navy was to have the benefit of the oil that had been dedicated to it in the naval petroleum reserves.

Congress must be presumed to have known that there were claimants who would be entitled to leases of producing wells on naval reserves and must have anticipated what subsequently happened—the filing of applications for leases of producing wells on the reserves and the granting of many such applications so that oil would be extracted even within the boundaries of the reserves.

Congress must also be presumed to have known that included within the boundaries of Naval Petroleum Reserve No. 1 were privately owned lands; that alternate sections within the boundaries of Naval Reserve No. 2 were privately owned; and that there were or might be claims of title under the placer mining laws on Naval Reserve No. 3.

Further, Congress must be deemed to have anticipated that all the public oil lands adjacent and up to the imaginary lines of the naval petroleum reserves would be leased

under the Act of February 25, 1920, and that no such imaginary lines could shut in and retain oil in the reserves. The situation was that it was probable that the reserves were or soon would become subject to depletion on account of drilling both within and without their boundaries. Congress must be deemed to have realized this situation. *Chesapeake & Potomac Tel. Co. v. Manning*, 186 U. S. 238, 245.

It acted promptly by including in "an act making appropriations for the naval service for the fiscal year ending June 30, 1921, and for other purposes", approved June 4, 1920 (41 Stat. L. 813), the following:

> "Provided That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled 'An Act to provide for the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain,' or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States; And Provided Further, That the rights of any claimant under said Act of February 25, 1920, are not affected adversely thereby; And Provided Further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum

> reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922; Provided further, That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct."

In view of these facts and of the language of the Act of June 4, 1920, and of the matters shown in evidence, the District Court upon the issue of law and fact marked 1 (a) above, construed the act as giving authority for the lease and contracts in controversy as made (R. 270). In this conclusion the Court of Appeals concurred (R. 816, lines 13-17).

1 (b) *Facts Bearing on the Question of Competitive Bidding.*

The only fact concerning the issue of law marked 1 (b) above, namely, that the contracts are invalid because they were made without competitive bidding, is that such contracts were made without advertising and competitive bidding in the sense in which those terms are used in Section 3709 of the Revised Statutes covering purchases and contracts for supplies or services; but as to this issue both the District Court and the Court of Appeals held that Section 3709 had no application to the lease and contract here. Upon this question the Court of Appeals said:

> "This special statute" (the Act of June 4, 1920), "not repealing the general statutes, the two stand together, one as the law relating to a special thing, viz., the naval reserves,—the other relating to

> general public land matters. It was therefore unnecessary that there be competitive bidding or advertising as to the making of the lease and contract, and other statutes with relation to the method of transacting the general public business of the United States were not applicable to this situation, the special statute fully covering the same" (R. 814).

We shall endeavor to show in our argument upon the construction of the statute, that the concurrent ruling of the District Court and the Court of Appeals correctly construes the statute on the matter of competitive bidding.

1 (c) *Facts Showing That the Contracts Were the Acts of Secretary Denby.*

As to the issue of fact marked 1 (c) above, namely, the issue upon the allegation that the contracts are invalid because, pursuant to the Executive Order of May 31, 1921, Secretary Fall negotiated them and the Secretary of the Navy took no part therein and exercised no discretion in relation thereto, the evidence briefly stated shows the following facts:

John K. Robison, a Rear Admiral in the Navy, became Chief of the Bureau of Engineering October 1, 1921. Shortly thereafter, under Secretary Denby's order, he assumed charge of all matters connected with naval petroleum reserves (R. 570-71; R. 314-15).

The question of whether or not loss of oil by drainage in Teapot Dome was so threatened that action ought to be taken by the Secretary of the Navy to save the oil, originated shortly before Admiral Robison assumed charge of the naval petroleum reserves, with one Carroll H. Wege-

mann, who had previously been connected with the Department of the Interior when Naval Reserve No. 3 was created, and who originally mapped out and fixed the northern boundary of the reserve at what he then thought to be the axis of a so-called saddle or dip between the Teapot Dome structure and the Salt Creek Dome structure to the south.

Early in September, 1921, in Denver, Dr. Bain, Director of the Bureau of Mines, and Mr. Ambrose, Chief Petroleum Technologist of that bureau, met Mr. Wegemann, then no longer connected with the Government, and a Mr. Fisher of the firm of Fisher & Lowrie, petroleum geologists and engineers of Denver. Dr. Bain had known both men for a long time, officially and socially (R. 662). They showed Dr. Bain and Mr. Ambrose a new structural map which had been made by Fisher & Lowrie, based on an examination and study of the field during the preceding summer by Mr. Wegemann and Mr. Fisher's firm, which disclosed that the axis supposed to separate the main portion of Naval Reserve No. 3 from the Salt Creek Field was nearly a mile farther south than Mr. Wegemann had shown it in his original mapping of the reserve. This and other geological data were discussed between the parties mentioned, as also was the fact that the leases made by the Government on June 15, 1921, in the southern part of Salt Creek Field would probably lead to drainage of that territory and from that on into Teapot Dome (R. 662).

The leases of June 15, 1921, had been directed to be made by Secretary Fall's predecessor, Secretary Payne. They covered 6,400 acres immediately adjacent to the northern boundary of Naval Reserve No. 3 and practically com-

pleted the leasing of all known oil lands in the Salt Creek Field (R. 298, 311-12).

On October 3, 1921, subsequent to his talk with Dr. Bain and Mr. Ambrose in Denver, Mr. Wegemann was in Washington and submitted to the Navy Department a report based on the new map made by Fisher & Lowrie (R. 733, 320-23). Mr. Wegemann also interviewed Judge Finney and Mr. Mendenhall of the Interior Department (R. 733) and left with them a copy of his report (R. 320-3), Secretary Fall being absent from Washington (R. 669).

In this report Mr. Wegemann sets forth the error that had been made in the matter of fixing the position of the saddle in Teapot Dome. He showed that in fact discoveries had been made that fixed the axis of the saddle much farther south in the reserve. The conclusions of his report are summed up as follows:

> "(1) All oil north of the line of the saddle crossing the northwest quarter of Section 28, township 39 north, range 78 west, will be driven toward the main dome of Salt Creek by the advancing body of water in the sand which will advance under hydrostatic head as the oil is drawn from the sand by the wells which will be drilled along the northwest line of the naval reserve and other wells in the main pool.
>
> "(2) There is grave danger that the recovery of the body of oil trapped between the advancing body of water and the large fault in section 33 will be greatly interfered with by the advance of the water. The beds are comparatively flat lying and movements of the oil and water in such beds cannot be predicted. The expense of recovery will be greatly increased due to the uncertainty of the position of

the pool and the total recovery of oil will in all probability be decreased by the invasion of the water.

"(3) There is no doubt that from the point of development of the property and recovery of oil from it, it will be much better to develop the property as a unit before the invasion of the water. The Navy Department cannot prevent draining the property as outlined above. It can make arrangements for the proper development of the property under conditions which will be mutually advantageous to the Navy Department and the operators" (R. 322-3).

Dr. Bain and Mr. Ambrose were not in Washington at the time the Wegemann Report was submitted; nor had they been there since seeing Wegemann in Denver. However, they returned to Washington about October 23, 1921 (R. 663). Secretary Fall was absent from Washington from July 31 to October 4, 1921 (R. 669).

After the return of Dr. Bain and Mr. Ambrose, at a conference (present: Admiral Robison, Secretary Fall, Dr. Bain and Mr. Ambrose), held about October 23, 1921, primarily in reference to Reserves Nos. 1 and 2, there was a general discussion of the subject of drainage (R. 663) and Dr. Bain and Mr. Ambrose stated what they had learned in Denver as to Reserve No. 3.

Dr. Bain testified:

"At that time we had out on the table the maps of Petroleum Reserves Nos. 1 and 2, and discussed specifically the policy in connection with drainage, what drainage meant, how it came about, what the influence of gas pressure was, what was the relative

value of leasing strips along the border, as compared to leasing larger areas, and the whole general proposition of drainage of oil fields at that time. And in that discussion the Secretary was advised by Mr. Ambrose and myself that leasing of strips along the edge of lands was only a temporary defense against drainage; that those wells would themselves drain from the lands further back, and that any such system of leasing would simply mean a continuous series of strip leases. In addition to that, that that would take the gas pressure off from an indefinite and unknown distance, and that this losing of gas pressure would mean that a large amount of oil would be rendered inert and unavailable; that it would be impossible to tell in advance of drilling how far that damage would go in a specific case, but that experience had been that it would go so far that one or two lines of wells was not adequate protection (R. 663-4). * * * Ambrose and I stated at that conference what we had learned from Wegemann and Fisher in Denver. We said that we had seen the Fisher and Lowery map, that there was on the face of it this evidence that a considerable part of the northern part of the reserve would be drained, as fast as wells were drilled in the southern part of the Salt Creek field, and that drainage, while not at the moment large and important, would become increasingly large and important as time went on" (R. 664).

It was determined at the Conference of October 23, 1921, that the data which Dr. Bain and Mr. Ambrose had seen in Denver, taken in connection with the Wegemann Report, warranted a further investigation and the Bureau of Mines was instructed to make a study of the matter and

that bureau delegated the work to Chief Petroleum Technologist Ambrose (R. 665).

About the same time—"about October 25, 1921, possibly a few days later"—Secretary Fall also asked Dr. George Otis Smith, Director of the United States Geological Survey (also a bureau of the Department of the Interior) to have an examination made by a competent geologist of the Survey (R. 316). Director Smith directed Mr. K. C. Heald to make the investigation. In November Heald went to Denver (R. 317) and got the data which Wegemann and Fisher had with reference to the corrected position of the saddle between Salt Creek Dome and Teapot Dome. He also had with him the Wegemann Report and the map accompanying it; also the original mapping of the Naval Reserve made by Wegemann when he was with the Geological Survey (R. 323). Heald then went to the Naval Reserve. He testified that he was able by making observations of a certain dip at one place in the Reserve to check Wegemann's data and he confirmed Wegemann's conclusion that the saddle was about a mile further south and left correspondingly more of the Reserve north of the saddle than had the original mapping of the Reserve (R. 319-20). Upon his return to Washington Heald made a report dated November 30, 1921 (R. 317-18), in which he confirmed Wegemann's correction of the position of the saddle.

Under the instructions given to him at the conference of October 23, 1921, hereinbefore mentioned, Mr. Ambrose of the Bureau of Mines studied the matter and collected data by assembling well logs and production records, and studied the water level of the sands and structural contour maps and evidence in regard to the depletion of gas, all in reference to Teapot Dome (R. 703).

About January 21, 1922, Mr. Ambrose discussed with Dr. Bain the data in reference to Naval Reserve No. 3 which he had gathered in his investigation (R. 665). The Bureau of Mines also had data showing the losses that had been sustained by the Government in the naval reserves in California through inability to make leases therein prior to February 25, 1920 and through delay in leasing thereafter but prior to March 4, 1921. These losses as shown by the data, amounted to several million dollars (R. 677-9). It likewise had data showing losses in recovery in several typical oil fields by delaying until after well reaching the oil pools on neighboring lands had been drilled. To state it briefly, these tables showed that one whose well first reaches the pool where oil is stored in the ground, obtains a larger share of the oil than one who drills later. The report shows that "delay in drilling offset wells results in a loss in ultimate yield per acre of 5 to 50% and that the nearer the wells are to the land being drained, the greater the loss" (R. 683).

Dr. Bain and Mr. Ambrose agreed in their discussion of the question that if the saddle between the Salt Creek Dome and Teapot Dome contained water, the saddle would constitute a seal between the two domes and protect the reserve south of the saddle, but if the saddle contained oil, then they felt certain that the reserve would be subject to drainage which would cover an indefinite area (R. 692). F. B. Tough, Chief Mineral Supervisor in the Wyoming District (R. 660) and other Bureau of Mines men, felt quite certain that there was oil in the saddle (R. 692). Mr. Ambrose felt quite certain that there was oil in the saddle and so expressed himself to Dr. Bain (R. 693).

During the time when these investigations were being made, Secretary Fall was absent from Washington. He returned January 27, 1922 (R. 298).

Soon after the date last above mentioned, there was a conference between Admiral Robison, Secretary Fall, Dr. Bain and Mr. Ambrose (Robison R. 606; Bain R. 670; Ambrose R. 707). The first thing taken up at the conference related to the California reserve. After that there was a discussion of Reserve No. 3 (Bain R. 693-4; Robison R. 645).

Dr. Bain and Mr. Ambrose advised that the Wegemann Report had been confirmed and that:

> ... • • • in the opinion of the Bureau of Mines Naval Petroleum Reserve No. 3 was subject to drainage, that it would be subject to more drainage as time went on and that some lease or other arrangement" (line dropped in printing of record) "was some discussion as to how far south the drainage went. There was discussion as to faulting in there, and as to whether any part of the reserve could be held as free drainage; the attitude taken by the bureau was communicated to the Secretary and others present; and it was based upon information that Mr. Ambrose and I had had coming from the men in the field on the ground, and our study of that data; *and the attitude taken by the Bureau was that we could not tell how far south this drainage was going to extend, that we could not be positive that it would not extend indefinitely*, and Mr. Ambrose, who had given the matter the most study, felt that what was geographically the northern one-third to perhaps one-half would be subject to considerable drainage, and more of it might be, but

> he did not really consider the possibility of drainage in the southern part as very serious or very close (Italics supplied) (Bain, R. 665-6).

The advice Dr. Bain and Mr. Ambrose gave Admiral Robison and Secretary Fall was that they ought to make up their minds to do something as to leasing (R. 666). Upon receiving that advice Secretary Fall said to Admiral Robison, "What are you going to do about it?" Admiral Robison replied, "I certainly am not going to repeat the disaster we had in California. We have got to develop Teapot Dome" (R. 645). However, Admiral Robison stated to Secretary Fall that he would have to take the matter up with Secretary Denby before any action would be authorized (R. 645).

Thereafter Secretary Denby, upon the recommendation of Admiral Robison, decided to lease Naval Reserve No. 3. The decision to lease Naval Reserve No. 3 having been made by the Navy Department, Admiral Robison communicated Secretary Denby's decision to Secretary Fall and outlined what the Navy desired in connection with a lease of Naval Reserve No. 3 (R. 586). Pursuant to the Executive Order, the detailed work of negotiating a lease was done by Secretary Fall and his subordinates in the Interior Department, particularly Mr. Arthur W. Ambrose, Chief Petroleum Technologist of the Bureau of Mines (R. 339-40).

While Secretary Fall acted as spokesman for the Government in the negotiation of the lease, both he and Mr. Ambrose consulted with Admiral Robison throughout the negotiations (R. 327, 708). Admiral Robison testified

that he was in constant touch with the officials of the Interior Department in connection with the development of the terms of the lease (R. 590, 614) and that during the course of negotiations he saw Secretary Denby in connection with the matter from three to five times a week and reported to him the progress of the negotiations and discussed the subject of the negotiations as they progressed. Admiral Robison took an active part in determining what should be the ratio of exchange of royalty oil for fuel oil (R. 594-5) and secured higher royalties than were originally proposed (R. 593). Toward the latter part of March Admiral Robison took the draft of the lease as it then stood, to Secretary Denby (R. 614). He went over that draft with Secretary Denby word for word, paragraph by paragraph, from one end of it to the other. He and Secretary Denby made several changes which they thought were of advantage to the Navy and these changes were incorporated in the final draft (R. 595). Secretary Fall signed the lease on April 7, 1922 (R. 341). He then gave it to Admiral Robison who took it to Secretary Denby (R. 644). Secretary Denby and Admiral Robison again went over the contract in its entirety and Secretary Denby had it in his possession until he executed it (R. 595) on or about April 12, 1922 (R. 287).

Admiral Robison outlined to the Interior Department the program which the Navy desired to carry out in the supplemental agreement of February 9, 1923 and requested the Interior Department to prepare the formal draft (R. 596-9). Admiral Robison took part in the negotiations in reference to the supplemental agreement and went over

every paragraph of it with Secretary Denby before the latter signed it (R. 601).

Upon the evidence, the District Court found that the Secretary of the Navy had made the contracts his own for every purpose (R. 251, 271-2). In this finding the Court of Appeals concurred in the following language:

> "It was proper, of course, for the Secretary of the Navy to act through competent subordinates. Of necessity this must be so. We conclude that enough control was exercised by the Secretary of the Navy through Admiral Robison to preclude a court from holding that the entire power granted by the Act of June 4, 1920, to the Secretary of the Navy had been assumed by the Secretary of the Interior" (R. 815).

Thus the findings of the District Court and the Court of Appeals agree in eliminating the Executive Order of May 31, 1921, as a factor in the cause, the basis being that on the facts disclosed by the evidence the Secretary of the Navy did not surrender or fail to exercise the authority vested in him by the Act of June 4, 1920.

Inasmuch, however, as there are in the bill allegations which reflect on a President of the United States in relation thereto, we deem it not inappropriate to set forth a few facts concerning the Executive Order.

The Act of June 4, 1920 contained one important limitation upon the power of the Secretary of the Navy. Just as Congress had recognized the rights of placer mining claimants in the Act of February 25, 1920, even on the naval petroleum reserves, so, in the Act of June 4, 1920,

the Secretary of the Navy was not authorized to take possession of properties within the naval petroleum reserves on which there were pending claims or applications for permits or leases under the provisions of the Act of February 25, 1920, or on which there were applications for United States patent under any law, and the act contained an express proviso "that the rights of any claimant under said Act of February 25, 1920 are not affected adversely thereby." Therefore, even after the passage of the Act of June 4, 1920, authority over the naval petroleum reserves was divided between the Secretary of the Interior, the President of the United States and the Secretary of the Navy. The Secretary of the Interior had jurisdiction over parts of the reserves upon which there were pending applications for patent or pending applications for lease under the Act of February 25, 1920. The President had jurisdiction to lease additional areas in the naval reserves upon which producing wells were located under Section 18 of that Act and authority to make compromise settlements with placer mining claimants generally under Section 18a of the Act; and the Secretary of the Navy had jurisdiction over the remainder of the reserves.

Early in May, 1921, Secretary Denby suggested to the President that the Secretary of the Interior be requested to handle for the Navy the conservation, development and operation of the lands in the naval reserves (R. 310). On May 11, 1921, Secretary Fall submitted to Secretary Denby a tentative form of Executive Order for the President's signature "if it meets your suggestions of yesterday", and also a brief memorandum stating the

facts and law with respect to naval reserves (R. 308). The memorandum referred to was prepared by Assistant Secretary Finney (R. 306) who was a lawyer and who had had long experience in the administration of the public land laws (R. 300). Finney concurred in, approved and initialed the draft of executive order which went to Secretary Denby (R. 306). In the above memorandum Finney referred to the jurisdiction of the President, the Secretary of the Interior and the Secretary of the Navy over the naval petroleum reserves and expressed the opinion that the President could commit to the Secretary of the Interior the matter of authorizing additional wells or leases under Section 18 of the leasing act and that the Secretary of the Navy might under the Act of June 4, 1920 "request the Secretary of the Interior to handle for the Navy the conservation, development and operation of other lands and naval reserves", and pointed out that such a method "would avoid the duplication, antagonism and division of authority which existed under the past administration with respect to these matters" (R. 310).

We feel compelled to concur with the view thus expressed by Secretary Finney to the effect that with presidential concurrence the Secretary of the Navy might use an official of the Interior Department as well as one of the Navy Department to conduct negotiations on his behalf, and that therefore, the Secretary of the Interior, designated as he was by the President with the concurrence of Secretary Denby, might lawfully conduct these negotiations on behalf of the Navy Department.

The Navy Department was without personnel skilled and experienced in caring for or leasing oil lands (R. 430)

while the Interior Department did have a personnel possessing the requisite skill and experience (R. 430, 310).

Secretary Denby referred the draft of executive order to Assistant Secretary Roosevelt and Admiral Griffin, then Chief of the Bureau of Engineering.

Assistant Secretary Roosevelt, Admiral Griffin, Commanders Shafroth, Stuart and Cobey, and Naval Aide Commander Warren collaborated in suggesting changes in the draft of the Executive Order for the purpose of making clear that the Navy Department, while using the personnel of the Interior Department, still retained control (R. 428; also R. 430, lines 31-37).

After the draft was thus amended, Assistant Secretary Roosevelt of the Navy Department in person first submitted it to Secretary Fall and then took it to the President who signed it (R. 428, lines 37-41).

As to any intention to violate any provision of the Act of June 4, 1920, or any other statute, aside from the general indications at other places therein, the Executive Order closes with these words:

> "Subject to the conditions and limitations contained in this order and the existing laws or such laws as may hereafter be enacted by Congress pertaining thereto" (R. 14, lines 2-5).

It is thus seen from the very terms of the Executive Order that it did not attempt to delegate to the Secretary of the Interior the discretionary authority vested by the Act of June 4, 1920 in the Secretary of the Navy.

Even if any issue as to the Executive Order had not been eliminated by the courts below, the matter would be

settled by the recent decision of this Court in *United States* v. *Chemical Foundation*, No. 127, decided October 11, 1926.

2. *Facts Relating to the Charge That the Lease Is Fraudulent Because Granted Upon an Improper and Inadequate Consideration.*

As to the issue of fact marked 2 above, namely the issue arising on the charge that the lease is fraudulent because granted upon an improper and inadequate consideration, the evidence is that the lease was an unusually favorable one for the Government.

John McFadyen, Manager for the Ohio Oil Company, Rocky Mountain District, a witness for the Government, testified that his company would have been interested in a lease of Teapot Dome but that "It could not have considered making a lease as favorable to the Government" as the one in controversy (R. 403).

George K. Thomas, also a witness for the Government, testified that he is Secretary of the Pioneer Oil Company; that he prepared data for an application by his company for a lease of Teapot Dome under the Act of June 4, 1920, and went to Washington with that in view in March, 1922 (R. 344-345). That company did not put in a bid because it was not willing to make a bid as favorable to the Government as the lease in controversy (R. 347, Cross Examination).

GERALD HUGHES, a witness whose deposition was taken by but not read in evidence by the Government and was read in evidence by the defense, testified that he was a lawyer of Denver, that in October, 1921, he told Secretary Fall that he would be interested in obtaining a lease on Teapot Dome whenever leasing it was determined upon (R. 709). In March, 1922, the witness again saw Secretary Fall (R. 711). At that time Secretary Fall suggested he would hear from the witness a proposition for leasing the Dome and told witness of the proposition he had from Mr. Sinclair, being the same as the terms that were embodied in the lease as witness afterwards came to know them. Thereupon the witness told Secretary Fall that that was the best lease he could negotiate for the Government or that witness had ever heard of and that the terms were beyond what witness would be interested in (R. 712).

AMOS L. BEATY, President of the Texas Company having a capital of $164,000,000, a witness for the Government, testified that by appointment he saw Secretary Fall on March 31, 1922, and gave him a proposition for a lease of Teapot Dome. The witness in his testimony stated the terms that he had offered (R. 348-349).

HARRY FOSTER BAIN, Director of the Bureau of Mines of the Department of the Interior, a witness for the defense, testified that he and Mr. Ambrose, Chief Petroleum Technologist of his Department, discussed with Secretary Fall the relative results that would accrue to the Government under the Sinclair proposition as compared with the Beaty proposition; that they stated to the Secretary that

the royalties proposed by Mr. Sinclair would yield more oil to the Government than those proposed by Mr. Beaty (R. 668).

Admiral Robison, referring to the Texas Company bid, testified that if the Texas Company had put in a bid that was superior to the Sinclair bid it would have been accepted, but that he felt that the terms of the Sinclair bid were not only satisfactory and gave better than normal royalties but gave more than could be gotten from anybody else (R. 653-4).

The Midwest Company produced two-thirds or three-fourths of the total Salt Creek Field production (R. 696). The mid-continent field, embracing Kansas, Oklahoma and North Texas, is not controlled by any single interest but is "the most split-up production in the world" (Bain, R. 696). At the time the Teapot Dome lease was being negotiated the mid-continent price of crude oil was sixty or sixty-five cents higher than the Salt Creek price (R. 594). Under the Mammoth Oil Company contract the Government royalties were placed upon a valuation of posted mid-continent field prices or Salt Creek prices, whichever should be higher as the oil was run (R. 24).

Dr. Bain testified that he considered the lease advantageous in a great many respects; that it gave what they considered good royalties; and that it gave the Navy the option of exchange of its royalty oil for fuel oil which was better than the Navy had been able to get by purchase on competitive bidding through five years' experience (R. 668-9).

Arthur W. Ambrose, Chief Petroleum Technologist of the Bureau of Mines, testified that he believed the terms

of the contract were favorable to the Government and that he so advised Secretary Fall and Admiral Robison (R. 704).

The foregoing constitutes all the evidence bearing upon the question of who it was—the Government or Mr. Sinclair—that got the better of the bargain in negotiating the lease, or bearing upon the question of adequacy of consideration.

Upon the question of adequacy of consideration, the District Court said:

> "Second, there is the significant lack of material damage to the Government which usually attends allegations of fraud, for in the case at bar no attempt has been made to show that the lease (is) controversy was in itself a bad lease for the government, except perhaps theoretically by counsel, but on the other hand the testimony of the plaintiff's own witnesses who are competent to speak upon the subject, tends to show that it is a lease much more favorable to the Government than they as oil operators would be willing to assume. These elements are perhaps not controlling in a case of this character, but they are at least worthy of mention as being conspicuous because their presence is usually the basis of relief sought in cases of this kind" (R. 248).

The Court of Appeals does not dissent from this finding but seems to concur. It says:

> "If a Government official, engaged in making contracts for the Government, receives pecuniary favor from one with whom such contracts are made, a fraud is committed on the Government, and it mat-

ness then owing the M. D. Thatcher Estate Company as follows: $83,000 against indebtedness of M. T. Everhart for which the Estate Company had the Tres Ritos Cattle and Land Company notes as collateral, $10,000 against notes of Tres Ritos Cattle and Land Company, $15,000 against the note of A. B. Fall endorsed by Everhart, and the balance to Mr. Fall and Mr. Everhart.

At the trial each of the defendants objected to each item of deposits, deposit tickets, checks, book entries, ledger entries and each other book of account, records or papers of the various banks produced by the Government in connection with said Liberty Bonds upon the grounds, among other things, as to each item, that it was *res inter alios acta* and in the nature of hearsay as to Mammoth Oil Company (R. 743).

The trial court admitted the evidence with leave to each defendant to move to strike out the same, and defendants each moved upon the grounds stated to strike each item of such evidence.

The Trial Court found that there was no fraud in the procurement of the contracts here in question, even assuming that the above mentioned books and records had been properly admitted in evidence, but for the purpose of making the record sustained the motion to strike so far as it related to the books and records (R. 275-6).

The Court of Appeals held that said evidence was admissible against the defendants (R. 847-50).

We are convinced that the evidence was not admissible, but inasmuch as we concur with the view of the District Court that no fraud is shown even if that evidence be con-

sidered, for reasons of brevity we omit any discussion of its admissibility.

There was no evidence to show that Mr. Sinclair or any of the defendants or anybody connected with any of the defendants, ever had any connection whatsoever with the Liberty Bonds claimed to have been in the possession of Everhart on May 29, 1922. As a basis for the drawing of inferences, however, and in an effort to show Mr. Sinclair was a stockholder or otherwise interested in the Continental Trading Company, Ltd., the Government introduced the following evidence:

Under contract dated November 17th, 1921 the Humphreys-Mexia Company and Humphreys-Texas Company, corporations of the State of Delaware doing business in the State of Texas, sold to the Continental Trading Company, Ltd., a corporation organized under the laws of the Dominion of Canada, 33,333,333 barrels of crude oil to be delivered in the vendors' field tanks as, when and if produced from certain of their properties in Texas at the rate of 50% of the production of the vendor Companies including all royalty oil which the vendor companies controlled and including also such portion of the remaining 50% of their production as might remain after reserving the amount required by them for their own use and for carrying out existing contracts, such reservation not to exceed 40,000 barrels per day. The contract price was $1.50 per barrel. The contract was signed on behalf of the vendor companies by A. E. Humphreys and on behalf of the vendee company by H. S. Osler (R. 445-7).

Upon the same date, *i. e.* November 17, 1921, the two above named Humphreys Companies, joined collectively as

vendor, entered into a contract with the Prairie Oil and Gas Company and Sinclair Crude Oil Purchasing Company, joined collectively as vendee, whereby the vendor agreed to sell to the vendee "fifty (50%) per cent. of all the oil that may be produced from any field or pool in which it now or may hereafter operate, develop, own or control" from certain of its properties in Texas at the prevailing posted market price in the field where produced. The properties described from which the oil was to be produced were the same as those described in the contract with the Continental Trading Company, Ltd. This contract was by its terms subject to the contract which the vendor companies had made with the Continental Trading Company and was not to take effect until that contract was fully carried out (R. 448-50). This contract was signed on behalf of the Humphreys Companies by A. E. Humphreys; on behalf of the Prairie Oil & Gas Company by J. E. O'Neil and on behalf of the Sinclair Crude Oil Purchasing Company by H. F. Sinclair and R. W. Stewart "for the Directors" and by George H. Taber, Jr., as President and A. L. Carlson as Secretary (R. 450). Mr. Sinclair and Mr. Stewart signed tentatively on the 17th.

Again upon the same date *i. e.*, November 17, 1921, Continental Trading Company, Ltd., as vendor entered into a contract with the Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company, joined collectively as vendee, whereby the latter two companies purchased the oil which the Continental Trading Company had purchased from the Humphreys Companies and agreed to furnish the facilities necessary for taking and receiving the oil from

the Humphreys Companies. The price under this contract was $1.75 per barrel, or the field price of Mid-continent crude as posted from day to day by the Prairie Oil & Gas Company less forty cents per barrel whichever price might be higher up to but not exceeding a maximum price of $2.50 per barrel (R. 454-6). This contract was signed on behalf of the Continental Trading Company, Ltd. by H. S. Osler as President; on behalf of the Prairie Oil & Gas Company by J. E. O'Neil as President and on behalf of Sinclair Crude Oil Purchasing Company by George H. Taber, Jr. as President and A. L. Carlson as Secretary (R. 456).

Arrangements having been made for this contract between Continental and Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company, the latter two companies guaranteed the performance by the Continental Trading Company of its contract of purchase with the two Humphreys Companies (R. 451).

On May 26, 1923, Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company negotiated the purchase from Continental Trading Company, Ltd. of an assignment of the latter's contract with the Humphreys Companies for a consideration named in the contract of $400,000, the agreement to be effective as of June 1, 1923 (R. 457-60).

A. E. Humphreys testified that he had begun negotiations on the subject of the sale of 33,333,333 barrels of oil with one H. M. Blackmer (R. 452). Mr. Blackmer was Chairman of the Board of the Midwest Refining Company (R. 442). For some time negotiations had been carried on between Humphreys and Blackmer without result

until on November 14, 1921 they met in New York, no one else being present, and made a deal. Mr. Humphreys then called his attorney, Senator C. S. Thomas, into the matter. He told Senator Thomas he had made a deal with Mr. Blackmer for the sale of 30,000,000 barrels of oil at $1.50 per barrel (R. 452). This was on November 15 (R. 442). On that day Mr. Humphreys and Senator Thomas had luncheon with H. M. Blackmer, J. E. O'Neil, R. W. Stewart and H. F. Sinclair at which there was a discussion of the 30,000,000 barrel contract and also of the second contract which was to take effect upon the performance of the first (R. 442-3). After the contracts were outlined and discussed it was agreed that they should meet again the next day at Mr. Blackmer's rooms in the Vanderbilt Hotel. At the meeting next day further details were discussed and Senator Thomas prepared a draft of the contracts. Mr. Blackmer stated that the vendee in the 33,333,333 barrel contract would be the Continental Trading Company, Ltd. of Canada (Thomas, R. 444; Humphreys, R. 452). Senator Thomas raised a question as to the responsibility of that Company. Mr. O'Neil said "We will receive that oil—we expect to pay for it, and we will guarantee the performance of that contract" (R. 444). Mr. Sinclair, after consulting Mr. Stewart, volunteered the Sinclair Crude Oil Purchasing Company, the other purchaser from the Continental Trading Company, also as a guarantor (R. 453). Sinclair Crude Oil Purchasing Company was owned one-half by the Standard Oil Company of Indiana of which Mr. Stewart was Chairman of the Board, and one-half by Sinclair Consolidated Oil Corporation (R. 445).

Upon this offer of guarantee Mr. Humphreys accepted the Continental Trading Company as the vendee under the contract. Mr. Blackmer stated that the President of that Company would be there the next day to execute the contract (R. 444).

On the next day, which was November 17th, H. S. Osler, appeared as President of the Continental Trading Company and the contract covering the sale to his company was executed (R. 453). The contract between the Humphreys Companies and Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company was also executed on that date (R. 454).

While Colonel Humphreys and Senator Thomas knew that Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company were going to move and take the oil sold by Humphreys to the Continental Trading Company as the nominee of Blackmer (R. 454), and that O'Neil had stated on November 16th that those Companies were going to receive the oil and expected to pay for it (R. 444), they did not seem to have had actual knowledge until sometime later of the re sale contract between Continental Trading Company and the Prairie and Sinclair Companies (Thomas R. 451; Humphreys R. 453).

As to the participation of Mr. Sinclair and Mr. Stewart and Mr. O'Neil in the negotiations held in New York on November 15th, 16th and 17th, Senator Thomas testified:

> "I don't know who constituted the Continental Trading Company, Ltd., except that Mr. Osler appeared there as an officer of it. I did know that the Prairie Oil and Gas Company was interested there

in making another contract with Mr. Humphreys to take effect at the close of the first contract and that the Sinclair Crude Oil Purchasing Company was represented jointly with the Prairie Oil and Gas in the purchase of that remaining oil. I assumed that from the presence of Mr. Sinclair. That purchase was accomplished right there. I do not know whether Mr. Sinclair or Mr. O'Neil had any other interest than that" (R. 451-2).

As to the same matter Mr. Humphreys testified:

"I had no knowledge who constituted or were interested in the Continental Trading Company other than Mr. Osler.

I know there was another contract executed there the same day, and that one of the parties to that other contract aside from my companies was the Prairie Oil & Gas Company and the other party was the Sinclair Crude Oil Purchasing Company. Stewart and Sinclair represented the Sinclair Crude in making this contract and O'Neil represented the Prairie. I had no knowledge of any other purpose of their being there" (R. 453-4).

Mr. H. S. Osler, a barrister of Toronto, Canada, testified that about the middle of November, 1921, he met a gentleman in New York who asked him to handle the purchase and sale of a large quantity of crude oil. At the outset his client informed him that the business was of a confidential nature and that he did not wish his name disclosed (R. 504). His client informed him that a Colonel Humphreys was the owner of property in Texas which numerous interests had desired to purchase; that all previ-

ous negotiations to that end had failed, but that arrangements had now been made for the purchase of about 30 to 33 million of barrels of oil from Humphreys' properties, to be delivered as the oil was produced and that arrangements had also been made for a re-sale of said oil at an advance of 25 cents per barrel to the Prairie Oil & Gas Company and the Sinclair Crude Oil Purchasing Company (R. 505).

Mr. Osler was asked to act as counsel in preparing contracts to cover the purchase and re-sale and also to act for the client in the receipt and payment of all moneys under the contracts (R. 505). Mr. Osler advised his client that his (Osler's) position would be difficult in the event of any litigation growing out of the performance of the contracts unless the business was incorporated (R. 505). This having been agreed to, Mr. Osler caused the incorporation of the Continental Trading Company (R. 505). Application for the charter was made by Mr. Osler's law firm November 16, 1921 under the laws of Canada (R. 464-70). The charter was issued November 17, 1921 (R. 477). The capital stock of the Company was divided into 100,000 shares without nominal or par value (R. 473) all but 5 shares of which were represented by share warrants payable to bearer (R. 472).

Mr. Osler testified that the transaction between his client and the Sinclair and Prairie Companies was outlined to him and not negotiated by him. All the negotiations were over when the matter came to him. He drafted the contract whereby the Continental Trading Company, Ltd. sold to the Sinclair and Prairie Companies the oil purchased from the Humphreys Companies (R. 526).

Mr. Osler's client told him that he had associates in the matter but it does not appear from the evidence who such associates were. He named to Osler his associates (R. 515, 519, 520), but directed that Osler should not disclose their names (R. 504) and also that he did not wish his own name disclosed (R. 504). Mr. Osler therefore declined to disclose any of the names upon the ground of privilege (R. 504) but although stating that he saw in New York some at least of the persons named to him by his original client in the matter (R. 515) he testified:

> "If I saw Sinclair in New York he was a total stranger to me. I had never seen him before and did not know him by sight. *I don't think I know his name even* and it made no impression upon me and I can't visualize him at the meeting with anybody I met in New York on that occasion. It is quite possible he was at one or more of these meetings and of course I don't know, but speaking from recollection it does not come into my mind at all. As to whether James O'Neil was present at these meetings in New York, I am not making any statement as to any other persons that I saw there. I must refuse to do that. I have merely made this statement as to Sinclair in order to clear up what otherwise might be a misunderstanding (italics supplied) • • • Now, when Mr. Roberts asks me the question as to whether I saw an individual there, naming him, I say if he was one of those parties I am unable to give his name because I got that confidentially from my client. If not, I am still unable to give the name because I can not possibly allow Mr. Roberts to ascertain by a process of exclusion what I am not at liberty to give him directly" (R. 514-15).

Upon the finding sustaining the charge that Mr. Sinclair bribed Secretary Fall, the Court of Appeals directed the District Court to enter a decree conforming to the prayer of the bill. In addition to the facts in relation to the charge as stated above, the Court of Appeals drew inferences against the Mammoth Oil Company from the fact that Mr. H. M. Blackmer and Mr. James E. O'Neil on Letters Rogatory issued to them in France, refused to testify as under the laws of France they were permitted to do. It also drew inferences against the Mammoth Oil Company from the fact that Mr. Everhart refused to testify on the basis of his constitutional privilege against self-incrimination. It likewise drew inferences against the Mammoth Oil Company from the fact that Mr. H. S. Osler declined to answer certain interrogatories of the Government under the claim that the answers thereto would disclose matters told to him confidentially in his capacity as barrister and would therefore be violative of his client's privilege. The Court of Appeals also drew inferences against the petitioners from the fact that neither the Government nor the petitioners called Secretary Fall or Mr. Sinclair as witnesses.

Finally, the Court of Appeals drew inferences from matters having no relation to the Continental Trading Company, Ltd., or to the bonds claimed to have been in the possession of Everhart, but which were for the most part introduced by the Government as bearing collaterally upon the issue of adequacy of consideration, and used said inferences as further bases for the inference that Mr. Sinclair bribed Secretary Fall. For convenience of argument

the facts relating to these matters will be stated in connection with the argument. For brevity and to avoid repetition, we beg leave to incorporate those statements by reference. They will be found as follows:

The alleged dominance of Secretary Fall, *infra*, pp. 108-15;

The supposed celerity of Sinclair's proposition of February 3, 1922, *infra*, pp. 127-28;

The matter of the Pioneer and Belgo claims, *infra* pp. 128-36;

The alleged exclusion of other bidders, *infra*, pp. 136-42;

The Shaffer matter, *infra*, pp. 142-44;

The matter of secrecy, *infra*, pp. 144-53;

The exchange by Sinclair of a portion of the Mammoth Oil Company stock, *infra*, pp. 153-56;

The $25,000 loan by Sinclair to Fall in June, 1923, *infra*, pp. 156-60.

The contention of the Mammoth Oil Company is that the finding of bribery is wholly unsustained by the evidence, and that in reaching its conclusion the Court of Appeals after having found that there was no direct evidence of this charge, makes divers inferences which it claims support the charge, the inferences being such as do not reasonably or legitimately follow from any facts proven. The Mammoth Oil Company contends that the Court of Appeals not only drew inferences from facts which do not support the inferences, but further contends that the Court of Appeals from these unauthorized inferences drew others, and in that way took numerous steps away from the facts in the case, and in that way only was it able to make its finding of bribery.

These matters will be more fully set forth in the specification of errors and in the brief of the argument.

SPECIFICATION OF ERRORS.

Petitioner Mammoth Oil Company contends that in reaching its conclusion that the contracts were procured by bribery, the Court of Appeals committed obvious errors of law affecting injuriously the rights of Mammoth Oil Company and specifies the following as errors against said Company by the Court of Appeals:

1. The Court of Appeals erred as matter of law in that it made findings of fact against the Mammoth Oil Company which were not sustained by any evidence.

2. The Court of Appeals erred as matter of law in that no facts were established by any evidence or admission from which the bribery that was found by the Court of Appeals, or any fraud on the part of this petitioner in any matter involved in the cause could be reasonably or legitimately found or inferred.

3. The Court of Appeals erred as matter of law in drawing from the facts in evidence inferences of bribery on the part of Mammoth Oil Company in the making of the lease and contract of April 7, 1922; whereas no such inference could reasonably or legitimately be drawn from such facts.

4. The Court of Appeals erred as matter of law in drawing from the facts in evidence, inferences of bribery on the part of Mammoth Oil Company in the making of the supplemental agreement of February 9, 1923; whereas no such inference could be reasonably or legitimately drawn from such facts.

5. In drawing against Mammoth Oil Company inferences of bribery and corruption the Court of Appeals erred as matter of law in disregarding fundamental rules of law, in that said Court drew from facts in evidence direct sinister inferences which could not reasonably or legitimately be drawn from the said facts in evidence, drew inferences of fraud where inferences consistent with integrity were more reasonably to be drawn from the said facts in evidence, and drew inferences of fraud from matters shown by the record not to be facts.

6. In drawing inferences of fraud the Court of Appeals erred as matter of law in disregarding fundamental rules of law, in that it drew inferences, direct and remote, from other inferences.

As examples of the errors in matter of law relating to the erroneous finding of bribery covered by Specifications of Error Numbers 1, 2, 3, 4, 5 and 6 the Court erred in the following particulars:

(a) The Court of Appeals erred as matter of law in inferring that Mr. Sinclair was a shareholder of or otherwise interested in the Continental Trading Company, Ltd.; whereas no such inference could be reasonably or legitimately drawn from any fact or facts established by the evidence.

(b) The Court of Appeals erred as matter of law in inferring that the Continental Trading Company, Ltd. paid dividends or distributed any of its assets to its shareholders either in Liberty Bonds or otherwise in or prior to May, 1922; whereas no such inference could be reasonably or legitimately drawn from any facts established by the evidence.

(c) The Court of Appeals erred as matter of law in inferring from the inferences above stated with or without other inferences that Sinclair as a shareholder of or otherwise interested in the Continental Trading Company, Ltd., received dividends from said Company in Liberty Bonds at any time, no facts or circumstances being established by the evidence from which such inference could reasonably or legitimately be drawn.

(d) The Court of Appeals erred as matter of law in inferring from the inferences above stated with or without other inferences that Sinclair received $230,500 or any other amount in United States First Liberty Loan 3½% Bonds or any other Bonds out of a total of $300,000 of Bonds or out of any other amount from the Continental Trading Company, Ltd., or from any one else in or prior to May, 1922, or any other time, no facts or circumstances being established by the evidence from which such inference could reasonably or legitimately be drawn.

(e) The Court of Appeals erred as matter of law in inferring that Sinclair had a motive to bribe Secretary Fall, whereas no such inference could reasonably or legitimately be drawn from any facts in evidence and likewise erred in finding that Sinclair had the disposition to bribe Secretary Fall, whereas no such inference could reasonably or legitimately be drawn from any facts in evidence.

(f) The Court of Appeals erred as matter of law in inferring against the Mammoth Oil Company from the refusal of the witness Everhart to testify under the claim of constitutional privilege against self-incrimination, that the said witness did not pur-

chase the Liberty Bonds shown to have been in his possession, the said inference resting upon the assumed principle enunciated by the Court of Appeals that no honest man ever claims the constitutional privilege; whereas no such inference could reasonably or legitimately be drawn from such refusal.

(g) The Court of Appeals erred as matter of law in inferring that Everhart could not have acquired the Liberty Bonds shown to have been in his possession, through any means other than as a bribe for Secretary Fall's benefit; whereas no such inference could be reasonably or legitimately drawn from any facts in evidence.

(h) The Court of Appeals erred as matter of law in inferring that a bribe must have come from Blackmer, Stewart, O'Neil or Sinclair and in inferring from that and from other inferences that Sinclair was the only one of those mentioned and and the only one of all persons who had a motive to bribe Secretary Fall; whereas no such inference could be reasonably or legitimately drawn from any facts in evidence.

(i) The Court of Appeals erred as matter of law in inferring from the above inferences with or without other inferences that Sinclair delivered to Secretary Fall or Everhart the Bonds which it is claimed Everhart had in his possession in May, 1922; whereas no such inference could be reasonably or legitimately drawn from any facts established by the evidence.

(j) The Court of Appeals erred as matter of law in drawing inferences of fraud against the Mammoth Oil Company from the refusal of Henry Smith Os-

ler, a witness for the plaintiff, to answer certain questions propounded to him as such witness by the plaintiff, such refusal being on the claim by the witness that the answers would disclose privileged, confidential communications; whereas no such inference could reasonably or legitimately be drawn from such refusal of said witness.

(k) In like manner the Court of Appeals erred as matter of law in drawing inference of fraud against Mammoth Oil Company from what said Court terms the "evasive testimony" of said witness Osler while testifying as a witness for the plaintiff and under examination by the plaintiff; whereas no such inference could reasonably or legitimately be drawn from such evasiveness.

(l) In like manner the Court of Appeals erred as matter of law in drawing inference of fraud against Mammoth Oil Company from the refusal of Harry Blackmer to testify on Letters Rogatory issued to France; whereas no such inference could reasonably or legitimately be drawn from such refusal.

(m) In like manner the Court erred as matter of law in drawing inference of fraud against Mammoth Oil Company from the refusal of James E. O'Neil to testify on Letters Rogatory issued to France; whereas no such inference could reasonably or legitimately be drawn from such refusal.

(n) In like manner the Court of Appeals erred as matter of law in drawing inference of fraud against Mammoth Oil Company from the fact that neither the Government nor defendants called Albert B. Fall as a witness; whereas no such inference could reasonably or legitimately be drawn from such fact.

(o) In like manner the Court of Appeals erred as matter of law in drawing inferences of fraud against Mammoth Oil Company from the fact that neither the Government nor defendants called Harry F. Sinclair as a witness; whereas no such inference could reasonably or legitimately be drawn from such fact.

(p) The Court of Appeals erred as matter of law in drawing inferences of bribery and corruption against Mammoth Oil Company from other inferences that a trail of deceit, falsehood, subterfuge and bad faith surrounded the making of the lease, whereas none of such inferences could reasonably or legitimately be drawn against Mammoth Oil Company from the evidence.

BRIEF OF THE ARGUMENT.

In reversing the finding of the District Court that there was no bribery in obtaining the lease, the Court of Appeals seems to recognize but does not adequately state the rule that in an equity suit a finding of fact made by the chancellor is presumptively correct and will not be disturbed on appeal unless it is *clearly* (this word is left out in the statement of the rule by the Court of Appeals) against the weight of the evidence or based on a mistaken view of the law, but goes on to say:

> "Here the Appellate Court is not at the usual disadvantage which prevails when the trial court determines the facts. The views of the trial Court are not controlling, as the situation presents, not so much a dispute as to the evidence or the veracity of witnesses, as it does an opportunity for differences of opinion with respect to the inferences to be drawn from all the circumstances appearing in the record. This Court has the same right to draw conclusions from the silence or evasiveness of witnesses as has the trial Court. * * * Further, the conclusion of the trial Court as to fraud is a mixed one of law and fact" (R. 818).

It is apparent from this and indeed appears throughout the opinion that the Court of Appeals reached its conclusion of corruption in this case entirely upon the basis of inferences which it drew.

It will not be amiss, therefore, to briefly review the principles of law that have been long settled by which the force

and effect of the evidence adduced in relation to this charge may be considered, weighed and determined.

Principles of Law Involved.

The Legal Effect of the Evidence Is Always a Question of Law.

Interstate Commerce Commission v. *Louisville and Nashville Railroad Company*, 227 U. S. 88, 91:

> "A finding without evidence is arbitrary and baseless. * * * Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power."

Florida East Coast Railway Company v. *United States*, 234 U. S. 167, 185;

United States of America v. *Louisville & Nashville Railroad Company*, 235 U. S. 314, 321;

Great Northern Railway Co. v. *State of Minnesota, ex rel.*, 238 U. S. 340, 345;

Philadelphia & Reading Ry. Co. v. *United States*, 240 U. S. 334, 336, 341;

Randall v. *Baltimore & Ohio R. R. Co.*, 109 U. S. 478, 482.

District of Columbia v. *Moulton*, 182 U. S. 576, 579:

> "Where but one inference can reasonably be drawn from the evidence" upon any issue "the question is one of law for the court."

Hepner v. *United States*, 213 U. S. 103, 112 113;

Barrett v. *Virginian Railway Co.*, 250 U. S. 473, 476;
Interstate Commerce Commission v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 91.

In such a case Congress could not grant to any tribunal power to draw an unreasonable, unjustifiable, illegitimate conclusion from the evidence upon the question. Such a grant would be a grant of arbitrary power and unconstitutional.

Under these principles and authorities we believe a further discussion will show that any finding that Mr. Sinclair was interested in Continental Trading Company as a shareholder or otherwise, or that the Continental Trading Company was in any wise the agency of Mr. Sinclair, or that Mr. Sinclair was in any way connected, directly or indirectly, with the Liberty Bonds claimed to have been in the possession of Everhart, was beyond the power of the Court of Appeals, even were it a civil case where no charge of fraud was involved, because no evidence supports any such finding.

Proof of Fraud Must Be Clear, Unequivocal and Convincing—Fraud Cannot Be Presumed.

Far beyond the principle against findings without evidence in ordinary civil cases is the rule in cases where fraud is charged, and especially where fraud of so grave a character as bribery is involved.

The rule in the Federal courts has long been well-settled that fraud is not to be presumed; that it is not to be presumed from any number of lawful acts; that where an act

and circumstance are as consistent with an honest motive as with a dishonest one, the former must be preferred; that fraud cannot be proved by a bare preponderance of the evidence, but only by evidence that is clear, unequivocal and convincing.

Conard v. *Nicoll*, 4 Pet. 291;
U. S. v. *Arredondo*, 6 Pet. 691;
Clarke v. *White*, 12 Peters 178, 196;
Kessler & Co. v. *Ensley Co.*, 141 Fed. 130, 137;
Jones v. *Simpson*, 116 U. S. 609, 615;
United States v. *Maxwell Land Grant Company*, 121 U. S. 325, 381;
United States v. *Hancock*, 133 U. S. 193, 197;
Foster v. *McAlester* (C. C. A. 8), 114 Fed. 145, 152;
The Atlantic Delaine Company v. *James*, 94 U. S. 207;
United States v. *Des Moines Navigation & Railway Company*, 142 U. S. 510;
U. S. v. *Budd*, 144 U. S. 154;
U. S. v. *American Bell Telephone Company*, 167 U. S. 224;
United States v. *Stinson*, 197 U. S. 200;
United States v. *Clark*, 200 U. S. 601;
Mastin v. *Noble* (C. C. A. 8), 157 Fed. 506;
Wilson v. *Sands* (C. C. A. 8) 231 Fed. 921;
Folk v. *United States* (C. C. A. 8) 233 Fed. 177;
U. S. v. *King* (C. C. A. 9) 83 Fed. 188;
United States v. *Wildcat*, 244 U. S. 111.

There are certain well-settled rules of law that guide the courts in the determination of this question. If the circumstances proven are as consistent with honesty and good faith as with fraudulent intent, the inference of fraud is unwarranted. Fraud cannot be established by circumstantial evidence unless it is the only conclusion that can fairly and reasonably be drawn.

U. S. Fid. & Guar. Co. v. *Des Moines Nat. Bank*, 145 Fed. 273; 74 C. C. A. 553.

Proofs which only create a suspicion are not sufficient to warrant a finding of fraud. *U. S.* v. *Hancock*, 133 U. S. 193; 10 Sup. Ct. 264; 33 L. Ed. 601.

A mere preponderance of evidence which at the same time is vague or ambiguous is not sufficient to warrant a finding of fraud. *Lalone* v. *United States*, 164 U. S. 255; 17 Sup. Ct. 74; 41 L. Ed. 425.

In a civil action, where fraud and bribery are charged, the presumption of innocence applies with the same force and effect as it does in a criminal case, and that presumption of innocence outweighs all other presumptions and inferences until it is overcome by clear and convincing evidence. *Jones: Commentaries on Evidence, Second Edition* (1926), Vol. I, Sec. 44; pages 82-84.

The Rules as to Inferences.

No inference is reliably drawn from premises which are uncertain; nor can legitimate inferences be drawn from other inferences nor presumptions indulged which rest upon the basis of another presumption. The law re-

quires an open, visible connection between the principal fundamental facts and the deductions from them and does not permit decisions to be made on remote inferences. A presumption is not a circumstance in proof and it cannot therefore be made the legitimate foundation for another presumption. There is no open and visible connection between the fact out of which the first presumption arises and the fact which is sought to be established by the dependent presumption.

U. S. v. Ross, 92 U. S. 281; 23 L. Ed. 707;

Manning v. Insurance Co., 100 U. S. 693; 25 L. Ed. 761;

Looney v. Metropolitan Street Ry. Co., 200 U. S. 480; 26 Sup. Ct. 303; 50 L. Ed. 564;

U. S. Fidelity & Guaranty Co. v. Des Moines Natl. Bank, 145 Fed. 273; 74 C. C. A. 553;

Vernon v. United States, 146 Fed. 121, 125;

Postal Telegraph Cable Co. v. Livermore & Knight Co., 188 Fed. 696, 699;

Cunard Steamship Co. v. Kelley, 126 Fed. 610, 615;

Davis v. United States, 18 App. (D. C.) 468, 495.

Failure to Produce Evidence.

No unfavorable presumption arises from the failure to produce evidence unless there is some duty to produce it, nor unless it is shown to be within the control of the party who fails to produce it, nor from the failure to call

as a witness one whom the other party had the same opportunity of calling, nor if the testimony not given is privileged.

U. S. ex rel. Bajtauer v. *Commissioner of Immigration*, No. 111, October Term, 1926, decided by this Court, Jan. 3, 1927;
State v. *Buckman*, 74 Vt. 309; 52 Atl. 427;
Cross v. *Lake Shore Ry.*, 69 Mich. 363;
First National Bank v. *Hyland*, 6 N. Y. S. 87; 53 Hun 108;
Erie R. R. v. *Kane*, 118 Fed. 223, 238;
Scovill v. *Baldwin*, 27 Conn. 316;
Bleeker v. *Johnston*, 69 New York 309, 313;
Arbuckle v. *Templeton*, 65 Vt. 205;
Crawford v. *State*, 112 Ala. 1.

No inference may be drawn from the refusal of the witness to testify on the claim of constitutional privilege against self incrimination. In *Beach* v. *United States*, 46 Fed. 754, Mr. Justice Stephen J. Field, sitting in the Circuit Court, clearly states the rule as follows:

> "The refusal of the witness to answer the questions, if he thought his answers would criminate himself, was his constitutional right, which the defendant could not control, and no inference should have been permitted to be drawn against the defendant because of the assertion by the witness of this right to protect himself. Marks was called by the Government. If he had testified, his testimony might have been in favor of the defendant, though criminating himself. It might have entirely exonerated the defendant. To infer that the very opposite would have been or

might have been the effect of his testimony, had it been given, was unwarranted."

See also:

State v. *Harper*, 33 Ore. 524;
Powers v. *State*, 75 Neb. 226;
State v. *Weaver*, 165 Mo. 1.

Under the same general principle, a defendant is not called upon to introduce evidence to contradict or explain facts which are insufficient to establish any liability against him. The true rule is that silence of a party may be considered in weighing proofs already adduced tending to fix a liability on him in matters where complete and more exclusive knowledge of the facts concerning which he is silent, is laid at his door.

In Jones, *Commentaries on Evidence*, 2d Edition (1926), Vol. I, Sec. 104, p. 179, it is said:

> "It has frequently been recognized and affirmed, that plaintiff cannot make out his *prima facie* case and sustain his burden with the aid of an inference arising from failure of the other party to introduce evidence until such time as he, the plaintiff, shall have made out a *prima facie* case. The defendant is always entitled to rest upon the weakness of the case against him up to that point of the trial."

Owens Bottle Mach. Co. v. *Kanawha Banking & Trust Co.*, (C. C. A. 4) 259 Fed. 838; 842;
Omar Oil & Gas Co. v. *Barr Oil Co.*, 285 Fed 588;
Stimpson v. *Hunter*, 234 Mass. 61;

Shotwell v. *Dixon*, 136 N. Y. 43;
Loper v. *Askin*, 178 App. Div. (N. Y.) 163, 164;
Texas & Pacific Ry. Co. v. *Shoemaker*, 98 Texas 451;
Blackman v. *Andrews*, 150 Mich. 322; 114 N. W. 218;
Chicago Mill & Lumber Co. v. *Cooper*, 90 Ark. 326; 119 S. W. 672;
Thompson v. *Daviltte*, 59 Ga. 472;
Lowe v. *Massey*, 62 Ill. 47;
City of New Orleans v. *Gauthreaux*, 32 L. Ann. 1126.

The Unlawful Inferences Drawn by the Court of Appeals to Sustain the Charge of Bribery.

The opinion of the Court of Appeals clearly discloses that bribery constitutes the basis of its adverse finding. No charge of bribery is made in the Bill of Complaint, but the opinion of the Court of Appeals shows the manner in which the question was raised. At the very outset of its discussion of the question of fraud, the Court states the theory of the Government, which it sustains, as follows:

> "There is no charge of corruption in this case as to any of the officials of the Government, except as to former Secretary of the Interior Albert B. Fall. It is the theory of the Government, bluntly stated, that Secretary Fall received from Harry F. Sinclair, sole owner of appellee, Mammoth Oil Company, a pecuniary consideration which influenced him in granting to said Oil Company a lease of Naval

> Petroleum Reserve No. 3, commonly known as 'Teapot Dome'. Counsel for the United States charge in their brief that Mr. Sinclair received as dividends from the Continental Trading Company, Ltd., $230,500.00 face value of United States Liberty First 3½% Bonds, which he turned over to Secretary Fall in May, 1922, as a bribe" (R. 816).

There is no evidence that Mr. Sinclair ever received any Liberty Bonds as a dividend or otherwise from the Continental Trading Company, Ltd., and there is no evidence that he ever delivered any Liberty Bonds to Secretary Fall (except $25,000 of bonds loaned *in June, 1923*, which admittedly had no relation to the $230,500 lot of bonds, *infra*, pp. 156-60). The Court's conclusion is, therefore, entirely based upon inferences. The Court itself so concedes in the following language:

> "While no isolated fact, circumstance or presumption in the case, and no particular inference may be sufficient to establish Sinclair's connection with the receipt of bonds by Fall or Everhart, yet taking the entire record of what was done, and all the inferences properly to be drawn therefrom, the fact is sufficiently established that the bonds in the possession of Everhart and used in part for Secretary Fall's benefit, were received by Everhart either from Sinclair or the Continental Trading Company, Ltd." (R. 846).

We believe that we shall demonstrate that the court's finding that Sinclair delivered or caused to be delivered bonds to Secretary Fall in May, 1922, was pure inference drawn, not from any fact or circumstance disclosed by the

record, but in the first instance from four other basic inferences, and secondarily from numerous other basic inferences.

(a) The First Basic Inference.

The first and starting basic inference drawn by the Court of Appeals is that Sinclair, Stewart and O'Neil were associates in interest with Blackmer in the purchase of 33,333,333 barrels of oil from Humphreys at $1.50 a barrel and that the purchase could have been made directly from Humphreys by the Prairie Oil and Gas Company and the Sinclair Crude Oil Purchasing Company. In other words, this inference is that Sinclair, Stewart and O'Neil were stockholders in the Continental Trading Company, Ltd., in addition to Blackmer.

The Court of Appeals says:

> "It does not appear why the sale from the Humphreys Company was not made directly to the Prairie Oil & Gas Company and the Sinclair Crude Oil Purchasing Company. It is apparent that there was a handsome profit for someone, presumably the Continental Trading Company, Ltd., in this peculiar transaction" (R. 831).

H. M. Blackmer was in no way associated with either the Prairie Oil & Gas Company or the Sinclair Crude Oil Purchasing Company. Yet he is the one who alone negotiated the purchase of the thirty-million barrels of oil at $1.50 per barrel from Colonel Humphreys, and he alone made the deal with Humphreys (R. 452). It is clear from the testimony of Humphreys and Thomas, taken in con-

nection with that of Osler (all witnesses called by the Government) that Blackmer was Osler's client. Osler testified that when he met his client in New York about the middle of November, 1921, the client told him that he had purchased thirty or thirty-three million barrels of oil from Humphreys and had arranged to sell it to Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company at an advance of twenty-five cents per barrel (R. 504-5).

There is no evidence whatever that the Prairie and Sinclair companies could have purchased directly from Humphreys at $1.50 per barrel. If any inference is to be drawn from the record, the natural and reasonable inference is—nay, the evidence is—that Blackmer had the opportunity to buy, which he had followed for some time, and did buy the oil from Humphreys and then sold it to the companies represented by O'Neil, Stewart and Sinclair.

The evidence shows that Blackmer had associates in the matter but it does not appear who such associates were. He named to Osler his associates (R. 515, 519, 520) but directed that Osler should not disclose their names (R. 504). He did not wish his own name disclosed (R. 504). Osler testified that he saw in New York some of the persons named to him by his client (R. 515) but he stated:

> "If I saw Sinclair in New York he was a total stranger to me. I had never seen him before and did not know him by sight. I don't think I know his name even and it made no impression upon me and I can't visualize him at the meeting with anybody I met in New York on that occasion. It is quite possible he was at one or more of these meetings and of course I don't know, but speaking from recollection

it does not come into my mind at all. As to whether James O'Neil was present at these meetings in New York, I am not making any statement as to any other persons that I saw there. I must refuse to do that. I have merely made this statement as to Sinclair in order to clear up what otherwise might be a misunderstanding.

"• • • Now, when Mr. Roberts asks me the question as to whether I saw an individual there, naming him, I say if he was one of those parties I am unable to give his name because I got that confidentially from my client. If not I am still unable to give the name because I cannot possibly allow Mr. Roberts to ascertain by a process of exclusion what I am not at liberty to give him directly" (R. 514-15).

It may be taken that Colonel Humphreys knew that Blackmer had associates in the purchase of the oil, as he testified, "After agreeing with Mr. Blackmer on the number of barrels *they* would purchase and the price *they* would pay, I called Senator Thomas into the matter" (R. 452). Yet he testified:

"I had no knowledge who constituted or were interested in the Continental Trading Company other than Mr. Osler. I knew there was another contract executed there the same day, and that one of the parties to that other contract aside from my companies was the Prairie Oil & Gas Company and the other party was the Sinclair Crude Oil Purchasing Company. Stewart and Sinclair represented the Sinclair Crude in making this contract and O'Neil represented the Prairie. I had no knowledge of any other purpose of their being there" (R. 453-4).

He understood, however, that their companies were going to furnish the facilities for moving the oil sold by him to the Continental Trading Company, Ltd. (R. 454).

Senator Thomas testified:

> "Prior to attending this lunch, Colonel Humphreys gave me an outline of an agreement which had been practically agreed to between himself and some of the gentlemen present, and, of course, I had that as a background, so that I had some idea of the matter, and what took place at the lunch was a review of what Mr. Humphreys had told me. In substance, he had agreed to sell and these gentlemen, or some of them, had agreed to buy thirty million barrels of oil from his company, that is to say the Humphreys Mexia and the Humphreys Texas Oil Companies, to be delivered from half of the output of the oil wells belonging to these two companies. There was an amount of thirty thousand gallons—not to exceed forty thousand—forty thousand barrels, I mean—from the other half if it should yield so much, which was to be reserved from the sale, if more than that, and the contract would be also satisfied by the vendees taking the difference between the amount required by the forty thousand barrels and the surplus, if any. They also arranged for a second contract to be executed at the same time, to take effect upon the performance of the first, which would also be confined to one-half of the output of the wells after the thirty million barrels had been delivered and paid for" (R. 442-3).

The Court of Appeals from the language of Senator Thomas that "these gentlemen, or some of them, had agreed to buy", draws an inference that Sinclair, Stewart

and O'Neil were interested with Blackmer in the thirty million barrel contract (R. 841). This vague language must not be considered apart from the context of the whole of the testimony of Senator Thomas which shows that he knew of no reason for the presence of O'Neil, Stewart or Sinclair at the meetings other than as representing Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company in connection with the contract made with those companies by Humphreys (R. 451-2).

As to Mr. O'Neil, Mr. Stewart and Mr. Sinclair, their companies were not only making a contract directly with Colonel Humphreys but they were also purchasing from Continental Trading Company the oil covered by the contract between that company and Colonel Humphreys, and were to take that oil, and in taking it were to be governed by many provisions of the contract last named.

Therefore, while not "interested" in the latter contract in the legal sense, Mr. O'Neil, Mr. Stewart and Mr. Sinclair were concerned in relation to its provisions because their companies were to become bound by them.

The matter is further revealed by three contracts read in evidence by the Government as follows:

> (1) The contract of November 17, 1922 between the Humphreys Companies and the Continental Trading Company, Ltd. (*supra*, p. 41; R. 445-7);
>
> (2) The contract of November 17, 1922 between the Humphreys Companies and Sinclair Crude Oil Purchasing Company and Prairie Oil & Gas Company (*supra*, pp. 41-2; R. 448-50), and

(3) The contract of November 17, 1922 between Continental Trading Company, Ltd., and Sinclair Crude Oil Purchasing Company and Prairie Oil & Gas Company (*supra*, pp. 42-3; R. 454-6),

These contracts should be considered in connection with the testimony of Colonel Humphreys (R. 454) and of Senator Thomas (R. 444).

Notwithstanding the uncontradicted evidence given by the Government's own witnesses, showing reasons for the presence of Sinclair, Stewart and O'Neil at the meetings with Humphreys consistent with the utmost integrity on their part and showing nothing inconsistent therewith, the Court of Appeals drew the inference that they were present at the meetings in New York as representatives of the Continental Trading Company, Ltd., as well as of the Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company; that they were, therefore, interested in the Continental Trading Company, Ltd., as stockholders or otherwise and were, therefore, muleting their own companies.

Having reached the conclusion that the Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company were muleted upon the basis of an inference that O'Neil, Stewart and Sinclair were interested in the Continental Trading Company, Ltd., the Court of Appeals uses the conclusion so arrived at as a basis for the inference from which the conclusion itself was drawn; that is to say, the court infers from the inferred muleting of the Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company that O'Neil, Stewart and Sinclair were interested in the Continental Trading Company.

Speaking of Sinclair, the Court of Appeals asks:

> "Would he participate in an arrangement by which the stockholders of the company he represented, would be mulcted to the extent of twenty-five cents per barrel of oil unless he were participating in the profits thereof?" (R. 841).

The same question might be asked in respect of Stewart and O'Neil as the Court of Appeals concludes:

> "The other gentlemen sitting around the New York luncheon table, with the exception of Humphreys and Senator Thomas, were also engaged in this piece of high finance" (R. 840-1).

A more natural and reasonable interrogatory is: Would O'Neil, Stewart and Sinclair dare to participate in an arrangement by which the stockholders of their companies would be mulcted to any extent at all? There is nothing in the evidence from which an inference can be drawn that the Prairie Oil & Gas Company and the Sinclair Crude Oil Purchasing Company or either of them could have purchased the oil sold to the Continental Trading Company directly from Humphreys at $1.50 per barrel or any other price. On the contrary, the evidence shows that Blackmer for a considerable period prior to November 14, had been negotiating with Humphreys for the purchase of that oil and on that day concluded a deal with Humphreys. Further, there is nothing to show, that the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company could have gotten this amount of oil from any other source or for any less price than $1.75 per barrel. Again,

there is nothing to show that the contract they made with the Continental Trading Company, Ltd., at $1.75 per barrel was not at the time it was made an advantageous contract for their companies. It was anticipated at that time that the Mexican oil fields were giving out and that there would be a general shortage of crude oil and a resulting large increase in price (R. 525). Indeed $1.75 was merely the minimum price. The contract price was "either One Dollar and Seventy Five Cents ($1.75) per barrel or the field price of Mid-Continent crude as posted from day to day by the Prairie Oil & Gas Company less forty cents (40c) per barrel, whichever shall be the higher price, up to but not exceeding a maximum price of Two and One-half Dollars ($2.50) per barrel" (R. 455).

The presumption that men act honestly and are faithful to their trusts overrides all other presumptions until it is overthrown by evidence. Yet the Court of Appeals drew an inference unsupported by any evidence, that the contract made with Continental Trading Company, Ltd., by O'Neil, Stewart and Sinclair on behalf of the companies they represented, mulcted their companies, and from that inference drew the further inference that they were stockholders or otherwise interested in the profits of the Continental Trading Company, Ltd.

As a further basis for its inference that O'Neil, Stewart and Sinclair were interested as stockholders in the Continental Company, Ltd., the Court of Appeals stresses the fact that Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company guaranteed the performance by Continental Trading Company of its contract with the Humphreys Companies.

Here again there is no room for the drawing of an inference of sinister and dishonest conduct or purpose, as the record shows that the Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company had agreed to purchase the oil from Continental Trading Company, Ltd., and had agreed with that company to furnish the necessary facilities for taking and to take delivery directly from Humphreys. The guaranty was an ordinary and reasonable business proposition. While the Humphreys Companies naturally wanted a guaranty because the Continental Trading Company, Ltd., was an unknown foreign corporation, the Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company were in a position to protect themselves as against the Continental Trading Company inasmuch as they were to take the oil directly from Humphreys. It is true that they paid the Continental Trading Company for the oil and depended upon the Continental Trading Company to pay Humphreys, but this arrangement involved no business risk to Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company. If Continental Trading Company, Ltd., defaulted in any payment required to be made by it to Humphreys, the Prairie and Sinclair Companies could easily have protected themselves by continuing to take the oil from Humphreys, paying him pursuant to the guaranty what was due him from the Continental Trading Company, Ltd., and adjusting their own payments to Continental Trading Company, Ltd., in accordance with what they paid to Humphreys for Continental's account.

Another basis of inference used by the Court of Appeals in its conclusion that the Continental Trading Com

pany, Ltd., was the agency of O'Neil, Stewart and Sinclair, as well as of Blackmer, is revealed by its question:

> "Is it reasonable to suppose that the sale to the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company by the Continental Trading Company, Ltd., of the Humphreys contract, in which there remained a profit of approximately $6,000,000.00 for $400,000.00, would have been made unless the Sinclair Crude Oil Purchasing Company or its officers were connected with and influential with said Continental Trading Company, Ltd.?" (R. 841).

The assignment referred to was made May 26, 1923, effective as of June 1, 1923 (R. 457-60), a year and a half after the contracts of November 17, 1921. It originated in a suggestion made by Osler. He testified, "The idea of it came from me and I originally suggested the sale" (R. 527). He further testified that in May, 1923, the whole situation had changed in several very important respects from that which had existed when the original business was transacted. In the first place, the general shortage of crude oil and the consequent anticipated rise in price had not taken place. Instead of crude oil running short and Mexico drying up, there was a flood of oil from all directions and new discoveries being made, and the price of crude oil, instead of going up very much above the dollar seventy-five cent price, had fallen below it so that that contract had become an onerous contract for the purchasing companies (R. 527). Osler testified that this situation developed many controversies and threats of litigation against the Continental Trading Company, Ltd., by the Humphreys companies.

Humphreys claimed that the purchasing companies were not carrying out the contract in reference to taking the oil. The necessary facilities were not being furnished, and he was making very large claims for damages for breach of the contract. Osler testified that it was quite apparent to him that if the Prairie and Sinclair companies desired to get out of the contract, their obvious course would be to perhaps not flatly and boldly refuse to carry out the contract but to make things very difficult for Humphreys so he could not get his payments as and when he was expecting them and not take the oil as and when he wanted. Another factor in the situation was that the production of the Humphreys properties had decreased and there was no possibility or at least, no probability that anything like the original stipulated amount of oil would be gotten out of his production (R. 528). Osler, referring to the factors above enumerated, testified:

> "Now I communicated that to my client, the same client that spoke to me about it originally. I don't think I met him casually. I think I met him by some special appointment and I drew his attention to it pointedly and I think I said then, as I would say now, I don't want to impute any (intentions) to break the contract to either of these companies, but I did not know the executives in these companies, all I know was if they wanted to get out of the contract that would be the way they would take to do it, and that would mean litigation and trouble and I suggested that it would be advisable to sell the contracts if they could be sold, and probably these companies or possibly at all events these companies would act very differently in carrying out the contract if they were

> the owners of this contract than what they might have acted if they were not the owners. In other words if my guess was right and anything of the kind was in question then the moment they had the whole contract themselves they could act independently and they might act very differently. That is the substance of the advice that I gave them leading up to the practical advice that if it were mine I would endeavor to sell it" (R. 528).

Osler further testified:

> "Replying to your question whether I based my suggestion upon the fact that litigation might disclose who composed the Continental Trading Company, I answer not in the slightest degree. That never came into consideration" (R. 529).

With this explanation in the record showing what operated in the minds of those interested in the Continental Trading Company, Ltd., which caused it to sell its contract to the Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company, and in the light of the fundamental presumption that the business dealings of men are honest until that presumption is overcome by evidence to the contrary, we submit that the fact that O'Neil, Stewart and Sinclair were able to negotiate a contract favorable to Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company, affords no ground for an inference that they were stockholders or otherwise interested in the Continental Trading Company, Ltd.

The Court of Appeals without evidence to support it seems to feel that it has reached an explanation of this

matter more reasonable than that given by the Government's witness. In speaking of the purchase of 33,000,000 barrels of oil from Humphreys by Continental Trading Company and the resale of that oil at an advance of 25¢ per barrel, the Court of Appeals, from the very profits made, infers that Sinclair was one of the principals and shared in the profits of this transaction (R. 645, lines 12 to 14) and in speaking of the sale of the remaining rights in the Humphreys contract by Continental Trading Company in the quotation here considered, the Court of Appeals assumes that conditions had not changed since the making of the contracts and from that assumes that "there remained a profit of approximately $6,000,000" in the Humphreys contract and again infers the sale of this great profit would not have been made for $400,000 "unless the Sinclair Crude Oil Purchasing Company or its officers were connected with and influential with said Continental Trading Company, Ltd." (R. 841). In other words, from the very losses this new contract would occasion to the Continental Trading Company, Ltd., and those interested in it, the Court of Appeals infers that Sinclair was interested and inflicting those losses upon himself. We confess our inability to see that the explanation assumed by the Court of Appeals is more reasonable than that contained in the evidence. Why Sinclair, if one of the principals in and sharing in these great profits, would consent to their sale for $400,000 if the profits still remained, we cannot understand.

Upon the inference that O'Neil, Stewart and Sinclair were Blackmer's associates in the Continental Trading Company, Ltd., and upon the inference that said company

was a "unique and peculiar institution", (R. 834) presumably because the stock of the company was represented by share warrants transferable by delivery though that was fully authorized by Canadian law, the Court of Appeals concludes:

> "The entire transaction of the purchase of the Humphreys oils by the Continental Trading Company, Ltd., and the resale to the Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company, bears the earmarks, either of a swindle of the stockholders of these companies, which of course is not a question before us, *or a scheme to create a fund to be used in the way the Government claims the profits of the Continental Trading Company, Ltd., were in part used, viz, for a sinister and unlawful purpose or both*" (italics supplied) (R. 838).

It then supports that inference by another set of inferences and sounds an introductory note for the drawing of such inferences by stating:

> "The record throws little light on the purposes of this most peculiar transaction, and the parties who could explain the same seem to be either conveniently absent from the country or strangely and eloquently silent" (R. 838).

The Court of Appeals then proceeds to support the inference that O'Neil, Stewart and Sinclair were associated with Blackmer in the Continental Trading Company, Ltd., by drawing inferences based upon Blackmer's refusal to testify, the refusal of Osler to answer certain questions, O'Neil's refusal to testify, Stewart's absence from the trial

and the failure of Mammoth Oil Company to call Sinclair as a witness.

The record does not show or afford a ground for legitimate inference that anybody mentioned in the cause, other than H. M. Blackmer and H. S. Osler, could have thrown any light on the purposes and personnel of the Continental Trading Company, Ltd.

H. M. Blackmer was questioned in France by the Government under Letters Rogatory, and as he might do in France, he made this answer:

> "I have retired from business and I do not intend to be drawn into this controversy. Because I have done nothing contrary to law, honor or morality, directly or indirectly, concerning this matter, I ask the Judge to pardon me if I respectfully refuse to reply to this question or to other questions which may be put to me" (R. 546).

If the Mammoth Oil Company had sought to interrogate Mr. Blackmer and his answer had been as it actually was here (and there is every indication that it would have been the same) would that have been taken as affirmative evidence in favor of Mammoth Oil Company? There is nothing in the record to charge Sinclair or the Mammoth Oil Company with the refusal of Blackmer to testify or to indicate that Blackmer in refusing was acting for the interests of Sinclair or for any reasons other than his own. The record shows that the Continental Trading Company, Ltd., was his creature and that he was Osler's client. Yet the failure of the Government in its fishing expedition to obtain something against the Mammoth Oil Company and Mr. Black-

mer's refusal to disclose his reasons for organizing the Continental Trading Company, Ltd. is treated as evidence from which to draw an inference that O'Neil, Stewart and Sinclair were stockholders in the Continental Trading Company, Ltd.

The Court of Appeals asks, "Why should Osler refuse to disclose the connection, if any, of Sinclair with this company?" (R. 841-2). Osler himself answers that question. He had declined to disclose either the name of his client or the names of any of the persons revealed to him by his client as associates in the Continental Trading Company, Ltd., upon the ground that such matters were communicated to him confidentially in his capacity as a barrister. His client had asked him not to disclose either his name or those of his associates (R. 519) and he stated that he would not answer any question as to *any* specified individual because he could not allow Government counsel to ascertain by a process of exclusion what he was not at liberty to disclose directly (R. 515). Yet he does show that Sinclair could not have been either his client or among those mentioned by his client (*supra*, pp. 68-9; R. 514-5). The Court of Appeals thought the very claim of privilege by Osler was a matter of grave suspicion in that it extended "to matters clearly without the scope thereof" (R. 835-6). It was not so construed by the courts of his own country. While they eventually decided against him by a divided court, even the majority held that he was entirely within his rights in making the claim of privilege and that indeed it was his duty to his client to make the claim and contest (R. 216).

There is nothing in the record to charge Sinclair or the Mammoth Oil Company with the refusal of Osler to testify

more fully than he did and the fact that Osler at his client's request did not wish to disclose the business and affairs of the Continental Trading Company, Ltd., affords no inference that Sinclair or Stewart or O'Neil were stockholders in the Continental Trading Company, Ltd.

The District Court held that under the evidence, Osler and the Continental Trading Company, Ltd., were the creatures of Blackmer. It declined to speculate as to the reasons why Blackmer refused to testify and why he desired Osler not to testify as to the Continental Trading Company, saying:

> "As to why he designated a company instead of himself to become the intervening party, is not disclosed, nor do we know that it is material inasmuch as it is not shown that Sinclair was interested in the company or that any other connection between Fall and Sinclair was disclosed in regard to it. Blackmer may have had people other than either one of these interested with him in his deal and for that reason may have found it necessary and convenient to have organized a company. Being an officer of the Midwest Refining Company, he may not have desired to testify in regard to the details of the transaction for the reason that it might be thought by his company that he should be held accountable for the profits derived in his brokerage transactions, or he may have been desirous of avoiding income taxes, or his refusal may have been based upon the ground that as there was no connection between his transaction and the Mammoth lease, that it was not the concern of other people in their investigation of an entirely different and disconnected transaction. *In the realm of speculation, we may allow our imaginations to roam at will*" (Italics supplied.) (R. 250-51).

Mr. James E. O'Neil was interrogated by the Government at Paris, France on Letters Rogatory, and as permitted by the laws of France, the witness made this reply:

> "To the question whether the witness had an official position in the Prairie Oil & Gas Company he replied that he had decided not to testify to any fact in connection with this proceeding, that he had no interest in the affairs which are involved, nor had he done any act which was illegal or contrary to morals relative to this affair; that his health is not good; that he was present contrary to the instructions of his physicians; that he had retired from business, and that because of these circumstances he preferred to remain outside the proceedings in suit, and he respectfully asked the judge to excuse him, and refused to reply to the question which had just been put to him or to any others which might be put." (R. 548).

The fact that the Government got nothing when it fished with O'Neil is again taken as though he had given affirmative evidence against the Mammoth Oil Company, and the Court of Appeals having already inferred that O'Neil along with Stewart and Sinclair were associated with Blackmer in the Continental Trading Company, Ltd. draws from O'Neil's refusal to testify the inference that Sinclair must have been such an associate. In other words, here again the Court of Appeals reaches a conclusion from a premise inferred from the conclusion. Neither the Mammoth Oil Company nor Sinclair can be charged with O'Neil's refusal to testify. He was in no way connected with the Mammoth Oil Company or with the leasing of Naval Reserve No. 3. He

stated the reasons for his refusal to testify. If those reasons are not to be accepted as true then the true reasons are purely a matter of conjecture even as to O'Neil and surely cannot be made the basis of any sort of inference against the Mammoth Oil Company. Here again we ask: If the Mammoth Oil Company had sought to take O'Neil's testimony and his answers had been the same as they actually were (and there is every indication that they would have been the same) would that have been taken as affirmative evidence in favor of Mammoth Oil Company?

The Court of Appeals also seems to charge Mammoth Oil Company with the failure of the Government to procure the testimony of Mr. Robert W. Stewart and quotes from the brief of Government Counsel to the effect that "a subpoena was issued for Mr. Stewart, but the marshal was never successful in serving him. During the trial he was in Mexico and South America" (R. 838). There is not a syllable of evidence in the record to substantiate such statement. On the contrary, the record shows that in the District Court Counsel for the Government stated that Stewart was under subpoena (R. 183). This declaration against interest in open court is at least some evidence of the fact stated. The Court of Appeals permitted Counsel for the Government to substitute for the record fact a statement that the statement made to the Trial Court was a mistake (R. 838) and apparently accepted the statement made by Counsel in their brief. Even were Counsel's self-serving declaration acceptable it should be noted that Counsel did not state in their brief when Stewart is alleged to have left the country, when the subpoena was

issued for him and what effort was made to serve such subpoena. This self serving declaration is not evidence against the petitioners but if it be accepted, the fact remains that Stewart was no more available to the Mammoth Oil Company as a witness than he was to the Government and the Mammoth Oil Company had no connection whatever with the failure of the Government to produce him at the trial. We submit that such failure cannot be used as a basis for the inference that either Stewart or Sinclair was a stockholder in Continental Trading Company, Ltd. and affords no basis for conjecture as to what Stewart's testimony would have been had he been called at the trial.

The final and crowning basis for the inference that Mr. Sinclair was a stockholder in the Continental Trading Company, Ltd. is stated by the Court of Appeals as follows:

> "From all the circumstances, *especially in view of his failure to testify and explain the formation of this corporation or to deny his connection therewith*, ..the reasonable inference is that Sinclair was one of the principals and shared in the profits of this transaction." (Italics supplied.) (R. 845.)

The record does not contain a scintilla of evidence from which it can be inferred that Sinclair could have explained the formation of the Continental Trading Company, Ltd. There is nothing to show that he had any knowledge of the business or affairs of the Continental Trading Company, Ltd. or as to who were its stockholders other than as was disclosed by the Government's own witnesses. The fact that he was charged in the brief of Government Counsel with being a stockholder of Continental Trading Company,

Ltd. affords no proof that he was such a stockholder, and the mere charge so made cannot be made the basis of an inference against him. As Mr. Sinclair's alleged silence is used by the Court of Appeals to support its entire structure of inferences, we shall consider it later in connection with such entire structure.

We have now discussed all of the bases used by the Court of Appeals in arriving at its first basic inference that Mr. Sinclair was one of the stockholders in the Continental Trading Company, Ltd. We have seen that it reached this conclusion partly by drawing inferences from facts or circumstances more reasonably consistent with a conclusion that he was not such a stockholder; partly by drawing inferences of dishonesty from facts and circumstances entirely consistent with the utmost integrity; partly by drawing inferences from other inferences and using the conclusion of an inference as the basis for the inference itself; and partly from mere conjecture not rising to the dignity of inference.

We now reach the second basic inference without which the Court of Appeals could not have arrived at its conclusion that Sinclair received Liberty Bonds from the Continental Trading Company, Ltd.

(b) The Second Basic Inference.

The Court of Appeals infers that the Continental Trading Company, Ltd. paid a dividend to its stockholders prior to May 29, 1922, in Liberty Bonds. This is in truth not even an inference; it is mere conjecture. There is not a particle of evidence that the Continental Trading Company,

Ltd. paid any sort of a dividend either in Liberty Bonds or otherwise at any particular time prior to such distribution as might have been required on final dissolution of the Company in August, 1923 (R. 480-1). It is claimed that on May 8, 1922, H. S. Osler took delivery of $300,000 face value of bonds which had been purchased for the account of the Continental Trading Company (R. 488). The Court of Appeals infers that these bonds were distributed by Mr. Osler as dividends or as assets to the holders of coupon share warrants of the Continental Trading Company, Ltd. without the slightest evidence from which to draw that inference merely because "it would be quite natural that a Company with so little expense, its officers being mere clerks in Osler's office and making so much money out of the purchase and re-sale of the Humphreys oils, and making it so easily would distribute dividends to its shareholders" (R. 845).

(c) The Third Basic Inference.

The third basic inference drawn by the Court of Appeals is a synthesis of inferences: first, that Mr. Sinclair had a motive to bribe Secretary Fall; second, that he was disposed and willing to bribe an officer of the Government; third, that of all the shareholders of Continental Trading Company, Ltd. (Blackmer and his undisclosed associates and the inferred shareholders, O'Neil, Stewart and Sinclair), who were entitled to receive the inferred dividend from that company, Mr. Sinclair was the only one who had a motive and the disposition to bribe Secretary Fall; and fourth, that indeed Mr. Sinclair was the only one of

all people, who dealt or might deal with Secretary Fall, who had a motive and the disposition to bribe him.

The record affords no basis for an inference that Sinclair had a motive to reward by bribe unless it be held that a man desires to so reward a Government official for negotiating with him a lease that others, witnesses called by the Government (McFadyen, Hughes and Thomas) testified they would not have considered because too onerous to the lessee (*supra* 34-5). This lease "of great value" (R. 839) was a lease which Dr. Bain deemed greatly advantageous to the United States (R. 668-9), which Mr. Ambrose advised was favorable to the Government (R. 704) and which Admiral Robison testified was not only satisfactory but gave the Government more than he thought it could get from anybody else (R. 653).

The inference that Sinclair was so base as to be willing to bribe an official of the Government, is not an inference drawn from any fact or circumstance, but is conjecture arrived at in the face of the record and of the presumption that men are honest until proven dishonest.

The Court of Appeals says "none other beside Sinclair in the company of men sitting around the table and arranging the Humphreys deal had any connection with Secretary Fall either at that time or in the future, so far as the record shows" (R. 845). Blackmer, O'Neil and Stewart are not parties to this suit. The record quite naturally does not show whether they had any connection with Secretary Fall.

The record also quite naturally fails to show what dealings other strangers to this suit might have had with Secretary Fall. As Secretary of the Interior Mr. Fall had

charge not only of the Government oil lands outside the Naval Petroleum Reserves subject to lease under the General Leasing Law but also of the oil lands belonging to the various tribes of Indians. He had charge of the public lands of the United States generally. If the presumption is to be indulged that no money or property ever reached Secretary Fall except through corruption, then how many opportunities for corruption were afforded him through the means of his great trust?

(d) The Fourth Basic Inference.

The Court of Appeals found it necessary to draw still a fourth basic inference to arrive at its final conclusion that Mr. Sinclair bribed Secretary Fall. It asks "Why is the plea of self incrimination—one not resorted to by honest men—the refuge of Fall's son in law Everhart?" (R. 842).

Speaking of the $200,000 of bonds claimed to have been acquired by Mr. Osler on May 8th, 1922, the Court says:

> "More than $200,000.00 of these assets in the form of Liberty Bonds had either been sold by May, 1922, and purchased by Everhart, or had reached him in other ways. If he had purchased them on the market there would be no reason for him to claim that testimony so showing would incriminate him, nor would there have been reason for Osler to evade testimony on this question. It is a reasonable and proper inference under these circumstances that Everhart did not receive the bonds through purchase" (R. 846).

Everhart testified that certain bonds in his possession on May 29th, 1922 were held by him in his own right as a prin-

cipal and he declined to give any further testimony concerning them on the basis of his constitutional privilege (R. 537). The record shows that Secretary Fall and Everhart were joint owners of the Tres Ritos Cattle & Land Company. This evidently was a company of considerable size with holdings of value as evidenced by the fact that notes of that company had been accepted by the Trustees of the Thatcher Estate as collateral to loans of very large amounts (R. 538). The evidence in relation to the bonds was that Everhart had them, not Secretary Fall, and that more than half were used for the benefit of Everhart, large portions of them on his own individual indebtedness and other portions on indebtedness of the Tres Ritos Cattle and Land Company of which he was half owner. Were there not ways consistent with integrity whereby Everhart could obtain possession of Liberty Bonds? The Court of Appeals, in the quotation last above, shows that one way in which Everhart could have obtained the bonds was that he might have purchased them. If they might have been so obtained, must not the inference be that they were obtained by purchase, rather than that they were dishonestly acquired?

The Court of Appeals does not go so far as to challenge Everhart's claim of privilege but after announcing the new and singular principle that no honest man ever claims the constitutional privilege, draws the inference that Everhart did not purchase the bonds. Further, although the Court infers that Everhart was a dishonest man, it infers that he could not have acquired the bonds by any means other than by taking them as a bribe for Secretary Fall. Thus the Court of Appeals weaves into the inference that

Everhart did not purchase the bonds and into the inference that he could not have acquired the bonds by any means other than by taking them as a bribe for Secretary Fall, a third inference that there were matters involved which gave to Secretary Fall a basis for demanding a reward for some disservice to the Government in connection with the lease. Such an inference is drawn in contradiction of the record that the lease was most advantageous to the Government and onerous to the lessee and that in the negotiation of the lease everything in it was argued about and fought over (R. 328; 668).

Any inference drawn from Everhart's claim of privilege is pure conjecture even as to Everhart. Despite that and despite the fact that neither the Mammoth Oil Company nor Mr. Sinclair had any connection whatsoever with the claim of privilege by Everhart and in the face of the unquestionable rule that the assertion of a privilege by a witness which relieves him from testifying cannot be charged to either party to the action, the Court of Appeals uses the inference it draws from Everhart's claim of privilege against the Mammoth Oil Company. In *Burdick* v. *United States*, 236 U. S. 79, 94, this Court says:

> "If it be objected that the sensitiveness of Burdick" (a witness) "was extreme because his refusal to answer was itself an implication of crime, we answer, not necessarily in fact, not at all in theory of law."

We submit that the Court of Appeals was unmindful that the constitutional privilege was intended as a shield for the innocent as well as, even more than, for the guilty.

An innocent person may expose himself to accusation and even condemnation by being compelled to disclose facts and circumstances known only to himself but which when once disclosed, he may be entirely unable to explain as consistent with innocence. In any event Mr. Everhart did no more than exercise a privilege given him by the Constitution of the United States, an instrument that requires no apology.

We now have four basic inferences, all of them drawn by the Court of Appeals in violation of fundamental principles of law:

(a) That O'Neil, Stewart and Sinclair were associated with Blackmer in the Continental Trading Company, Ltd. and were therefore stockholders or otherwise interested in that Company entitled to a share in its profits.

(b) That the Continental Trading Company, Ltd. paid a dividend prior to May 29th, 1922, in Liberty Bonds.

(c) That Mr. Sinclair, and he alone of the actual and inferred stockholders of the Continental Trading Company, and indeed he alone of all people, had a motive and the disposition to bribe Secretary Fall; and

(d) That Everhart could not have acquired the bonds which he had in his possession in May, 1922, by purchase or through any means other than receiving them as a bribe for Secretary Fall, who, it is inferred, had a basis upon which he might demand a reward.

The Inferences Drawn from the Four Basic Inferences.

Although there is no evidence as to how or in what manner or from whom Everhart acquired the Liberty Bonds which he is claimed to have had in his possession on May 29th, 1922, and which he testified he held as a principal but which he used largely for his own but partially for Secretary Fall's benefit; although there is no evidence as to what Osler or the Continental Trading Company, Ltd. did with the bonds claimed to have been delivered to Osler on May 8, 1922; although there is no evidence that Sinclair at any time received any bonds from the Continental Trading Company, Ltd.; and although there is no evidence that he delivered to Secretary Fall or Everhart or anybody for Fall's account any of the Bonds mentioned, the Court of Appeals found that Mr. Sinclair received as dividends from the Continental Trading Company, Ltd. $230,500 face value of United States Liberty First 3½% Bonds which he turned over to Secretary Fall in May, 1922 as a bribe.

The first part of the finding that Mr. Sinclair received as a dividend $230,500 face value of bonds from the Continental Trading Company is purely an inference since there is no evidence that he so received bonds, and it is an inference not from any fact or circumstance proved but is drawn from the first two of the above enumerated basic inferences, namely, (a) that Mr. Sinclair was a stockholder in or otherwise interested in the Continental Trading Company, Ltd. and (b) that the Continental Trading Company, Ltd. paid a dividend in May, 1922. Similarly, the other half of the finding that Mr. Sinclair delivered said bonds to

Secretary Fall is purely an inference since there is no evidence that he delivered any of said bonds, and it likewise is an inference not from any fact or circumstance proved but is drawn from the third and fourth of the above enumerated basic inferences, namely (c) that Mr. Sinclair and he alone of Blackmer and the inferred stockholders of the Continental Trading Company and he alone of all people had a motive and the disposition to bribe Secretary Fall and (d) that Mr. Everhart could not have acquired the bonds by purchase or by any means other than by receiving them as a bribe for Secretary Fall who, it is inferred, had grounds upon which to demand a reward in the form of a bribe.

Counsel for the Government in their brief in opposition to the Petition for Certiorari in this case claim that the Court of Appeals "was not building one assumption upon another. It was making a single inference from many proven circumstances all pointing one way" (Brief, p. 11).

We challenge Counsel for the Government to point to a single proven fact or circumstance in the Record which connects Mr. Sinclair with the receipt of bonds from the Continental Trading Company, Ltd. or the delivery of bonds to Everhart.

An easy way to avoid pointing out *any* circumstance is, with a broad sweep of the hand, to say, "*many* circumstances."

We submit that the Court of Appeals could not have reached its conclusion that Mr. Sinclair received bonds from the Continental Trading Company or that he delivered them to Secretary Fall by any number of reasonable and legitimate inferences drawn from proven facts or circum-

stances and that it reached its conclusion by inferences drawn from the four basic inferences which we have enumerated and which were themselves drawn in violation of fundamental rules of law. In other words, the Court of Appeals erred as matter of law in drawing the basic inferences and again erred as matter of law in inferring its conclusions from the basic inferences.

An analysis of the entire opinion in its dealing with the question of fraud demonstrates that the conclusion of the Court of Appeals consisted of inferences drawn from other inferences. Indeed, the final paragraph of the opinion on this subject indicates the matter. The Court says:

> "While no isolated fact, circumstance or presumption in the case and no particular inference may be sufficient to establish Sinclair's connection with the receipt of bonds by Fall or Everhart, yet taking the entire record of what was done, and all the inferences properly to be drawn therefrom, the fact is sufficiently established that the bonds in the possession of Everhart and used in part for Secretary Fall's benefit were received by Everhart either from Sinclair or the Continental Trading Company, Ltd" (R. 846).

How was it established that the bonds in the possession of Everhart and used in part for Secretary Fall's benefit were received by Everhart either from Mr. Sinclair or the Continental Trading Company, Ltd.? There is no evidence as to how Everhart obtained those bonds. The answer must be that the Court of Appeals inferred that it was so, and not from any fact or circumstance proved but from inferences that Secretary Fall had a basis upon which to demand

a reward in the form of a bribe, that no one beside Mr. Sinclair, or somebody connected with the Continental Trading Company, Ltd., had a motive to bribe Secretary Fall, and that Everhart could not have purchased the bonds or acquired them by any means other than as a bribe for Secretary Fall.

The Court of Appeals then goes on to say: "that Company, we have pointed out, is shown to have been the agent of Sinclair, Blackmer, O'Neil and Stewart" (R. 846). Of what does such a showing consist? As to everybody except Blackmer it is purely inference consisting of a number of unlawfully drawn inferences. As we have seen before, this inference charges Sinclair, O'Neil and Stewart with dishonesty and fraud against their own companies, when the only natural inference from the facts is that they were dealing honestly, and solely in the interest of their own companies.

The Court proceeds: "Its assets consisted principally of Liberty Bonds. These assets were delivered to the shareholders, as Osler's letter shows" (R. 846-7). Mr. Osler's letter was dated August 9, 1923, more than a year after the delivery of bonds to Everhart is even claimed. It does not show when the assets of the company were distributed; it does not show that there was ever any distribution of Liberty Bonds to its stockholders. It merely states, without reference to dates, that "all debts and liabilities of the above company have been distributed and it has parted with its property and divided its assets ratably amongst its shareholders" (R. 480-1). There is not a scintilla of evidence that the Continental Trading Company distributed

Liberty Bonds or any other character of assets in or prior to May, 1922. It is therefore pure inference that Mr. Sinclair received bonds from the Continental Trading Company in or prior to May, 1922, drawn not from a fact or circumstance proved but from the two other inferences that the Continental Trading Company distributed Liberty Bonds in or prior to May, 1922, and that Mr. Sinclair was a stockholder in that Company.

The Court of Appeals concludes:

> "If by direct evidence it appeared that Sinclair was the owner of certain Liberty Bonds which afterwards appeared in Secretary's Fall's hands, in view of all the circumstances of this case, a court could not escape the conclusion that Sinclair had transferred them to Fall. *The only difference here is that the bonds were the property of an agency in which Sinclair was interested, and in some manner reached Everhart and Secretary Fall*" (Italics supplied), (R. 847).

In the conclusion embodied in the sentence above italicized the Court of Appeals in fact concedes that it must conjecture as to how Everhart acquired the bonds and it infers that he got them from Mr. Sinclair by inferring that Mr. Sinclair was a stockholder in Continental Trading Company, that as such stockholder he was entitled to receive in May, 1922, a dividend from the Continental Trading Company, that he and he alone of the actual or alleged stockholders of the Continental Trading Company and he alone of all people had a motive to bribe Secretary Fall, that Everhart could not have acquired the bonds in any way

other than as a bribe for Secretary Fall and from those inferences drew the inference that Mr. Sinclair did receive and deliver to Everhart or caused to be delivered to him by the Continental Trading Company Liberty Bonds in May, 1922, as a bribe for Secretary Fall.

Inferences Drawn by the Court of Appeals to Support the Two Inferences Drawn from the Four Basic Inferences.

Having inferred from the four basic inferences hereinbefore discussed that Mr. Sinclair received Liberty Bonds from the Continental Trading Company, Ltd., and that he delivered said bonds to Secretary Fall as a bribe, the Court of Appeals then supports its structure of inferences by two props of the same material, namely, inferences drawn from the failure of Mammoth Oil Company to call Secretary Fall and Mr. Sinclair as witnesses to deny the charge of bribery (R. 842).

As to Secretary Fall, the Court of Appeals asks:

> "Why is silence the answer of a former cabinet official to the charge of corruption? * * * It is incredible that a former cabinet official in the position of trustee of the public lands for the people of the United States when accused of bribery and corruption in connection with his official duty in matters where great public interests are concerned, would not be quick to refute the same" (R. 842).

Secretary Fall was as available to the Government as a witness as he was to the Mammoth Oil Company. The fact that he did not demand to appear as a witness in an action to which he was not a party to deny a charge of corruption

not made in the Bill is made the basis of an inference against the Mammoth Oil Company. Is it not a more legitimate inference from Secretary Fall's silence under the charge of corruption made in a brief in a case to which he is not a party that, instead of thrusting himself as an interloper and a volunteer witness not called by either party in a controversy between others, he either saw nothing requiring him to so thrust himself in or awaited the time he would be obliged to meet such charge directly?

As to Mr. Sinclair, the Court of Appeals asks:

> "Why is silence the only reply of Sinclair, a man of large business affairs, to the charge of bribing an official of his Government? * * * These gentlemen have the right to remain silent to evade, to refuse to furnish information, and thus to defy the Government to prove its case, but a court of equity has the right to draw reasonable and proper inferences from all the circumstances in the case, and especially from the silence of Secretary Fall, and from the failure of Sinclair to testify. It is not sufficient answer that the Government might have used Sinclair as a witness. He was properly a witness for the defense. If he could not fully have explained the organization of the Continental Trading Company, Ltd. he could at least have placed beyond the realm of dispute the question of whether he was connected therewith, and whether he received any Government bonds as dividends therefrom, or shared in any distribution of its assets" (R. 842 3).

Thus, Mr. Sinclair's failure to take the stand and deny that he was a stockholder in the Continental Trading Company is used by the Court of Appeals as the final and

special ground for the inference that he was such a stockholder, and his silence in respect of the charge of bribery is treated as evidence of the truth of the charge. Where in the record are there proofs shown to have been adduced, tending to fix a liability on Mr. Sinclair in respect of the Continental Trading Company transaction? Where is Mr. Sinclair shown to have had any knowledge of the organization of the Continental Trading Company and of any distribution by it of its assets? Where is Mr. Sinclair shown to have had any knowledge of the Liberty Bonds claimed to have been in the possession of Everhart? In truth the record does not contain a syllable of evidence showing or from which it can be reasonably or legitimately inferred that Mr. Sinclair had knowledge of any of these matters.

We submit that any number of unnatural and illegitimate inferences do not supply proofs tending to fix a liability on a party within the rule that the silence of said party may be considered in weighing such proofs already adduced—that in this case the mere charge made by Government counsel in their brief, referred to and adopted by the Court of Appeals, that Mr. Sinclair bribed Secretary Fall is not something laid at his door for him to deny and disprove or be found guilty.

Having built a structure of inferences to sustain the charge that Mr. Sinclair bribed Secretary Fall and having propped it up by additional inferences drawn from the fact that Secretary Fall and Mr. Sinclair were not called as witnesses for the defense to deny the charge, the Court of Appeals then throws over its fragile creation a cloak of suspicion by drawing the further inference in reference to

the Continental Trading Company transactions in mid-November, 1921, that "while this was prior to the signing of the lease, it is reasonably certain that negotiations were then either being carried on with reference thereto, or were in immediate prospect" (R. 845).

Such inference is not only not drawn from any fact or circumstance in the record but is drawn in the very teeth of uncontradicted evidence that no decision to lease Naval Reserve No. 3 was made until the latter part of January, 1922; that Secretary Fall took no steps whatever to negotiate a lease until he was requested to do so by Secretary Denby through Admiral Robison, and that negotiations for the lease did not commence until February, 1922 (*supra*, pp. 27-8). There is nothing whatever in the record to show that in November, 1921, Mr. Sinclair contemplated a lease of Naval Reserve No. 3 or that he had any intimation that the leasing of the Reserve was then being considered by the Government. Not until December 31st did Mr. Sinclair even broach the subject of a lease.

The Court of Appeals says:

> "That there existed a somewhat intimate relationship between Secretary Fall and Sinclair is apparent. Sinclair visited Fall at his ranch in New Mexico and talked over the matter of the leasing of Teapot Dome. Sinclair's personal attorney drew the lease. Sinclair, at Secretary Fall's suggestion, after the lease was executed, arranged for a prominent newspaper publisher Mr. Shaffer to have some 400 acres of the Teapot Dome lands" (R. 839).

There is nothing in the record to show that Mr. Sinclair was even acquainted with Secretary Fall prior to

December 31, 1921, much less that he was on terms of intimacy with him. There is no evidence that Mr. Sinclair "visited" Secretary Fall. Mr. Sinclair and Mr. Zevely went to Three Rivers, New Mexico on December 31, 1921, for the purpose of discussing with Secretary Fall some business connected with Osage Indian leases. While there an inquiry was made whether Teapot Dome would be leased and Secretary Fall answered that an investigation was being made upon which that would be determined (R. 323). That is the whole of the evidence upon that subject.

It is not true that Mr. Sinclair's personal attorney drew the lease. The first rough draft of the lease was prepared primarily by Mr. Ambrose of the Bureau of Mines (R. 339) and other officials of the Government including Admiral Robison worked on and had a part in the negotiation and preparation of the lease as executed. The Court of Appeals is also in error in saying that after the lease was executed by Mr. Sinclair, Secretary Fall arranged for Mr. Shaffer to have a part of it. We shall discuss the Shaffer matter hereinafter. It affords no possible basis for inference of intimacy between Secretary Fall and Mr. Sinclair.

The crowning inference drawn by the Court of Appeals that Mr. Sinclair had in mind negotiations for a lease of Naval Reserve No. 3 in connection with the Continental Trading Company transaction in November, 1921 and the resulting inference that he participated in the transaction to create a fund to be used for the purpose of giving a bribe not only far overreaches the Record facts but emphasizes the attenuate and ethereal character of the Government's effort to connect the Continental Trading Company Trans-

action with the leasing of Naval Reserve No. 3. Why would Mr. Sinclair, described by the Court of Appeals as "a man of large business affairs", require a scheme to earn a bribe fund? Why imagine, without proof, that in order to obtain such a fund he would engage in a complicated deal to cheat his own company? The whole matter of the alleged connection between the Continental Trading Company, Ltd., transaction and the leasing of Naval Reserve No. 3 is not merely a fanciful creation built out of mere suspicion; it is absurd upon its face.

Additional Inferences from Which the Court of Appeals Drew Its Inferences That Sinclair Received Bonds From Continental Trading Company, Ltd., and Delivered Them to Secretary Fall as a Bribe.

The Court of Appeals concludes its discussion of the question of fraud by saying:

> "Is a court to say that because none testified as to the actual transfer of the bonds that a fatal missing link in the evidence exists? We conclude not. The reasonable, proper and natural inferences and presumptions from the accrual of condemnatory incidents appearing in this record supply the so-called missing links in the testimony and satisfy us of Sinclair's connection with the Continental Trading Company, Ltd., and with the acquisition of the Government Liberty Bonds by Everhart and Secretary Fall. A trail of deceit, falsehood, subterfuge, bad faith and corruption, at times indistinct, but nevertheless discernible, runs through the transactions incident to and surrounding the making of this lease" (R. 847).

In this, the Court of Appeals simply adds to the four basic inferences from which to draw the two final inferences that Mr. Sinclair received Liberty Bonds from the Continental Trading Company, Ltd. and that he delivered bonds to Everhart, a conglomeration of additional inferences. These additional inferences are drawn by the Court of Appeals to arrive at its finding of what it designates as "a trail of deceit, falsehood, subterfuge, bad faith and corruption", and while they are drawn from matters in no way connected with the Continental Trading Company, Ltd., or with Liberty Bonds, they are used as a further basis for the inferences that Sinclair received bonds from the Continental Trading Company, Ltd., and delivered them to Everhart for Secretary Fall.

We believe that we shall show that the Court of Appeals, in drawing these additional inferences, treated as facts from which to draw inferences, things not shown by the record to be facts—indeed, things shown by the record not to be facts; that it drew inferences against petitioners from facts unrelated to the lease or contracts in controversy and from facts with which neither the petitioners nor anyone representing them or any of them had any connection; that it drew sinister inferences from facts and circumstances perfectly lawful and entirely consistent with integrity, both of purpose and conduct; and that in the last analysis it drew such inferences from its own inferred conclusion of bribery.

In discussing these inferences we ask the Court to bear in mind that the evidence of the matters used by the Court of Appeals to draw them was adduced by the Government either in connection with the averments of the bill that the

contracts were without authority of law and were unlawful because made without competitive bidding, or in connection with the averment that Secretary Fall and not Secretary Denby made the contracts, or in connection with the averments of fraud contained in the bill which amounted to no more than that the contracts were made upon an inadequate and improper consideration (*supra*, pp. 10-11).

Although the Court of Appeals does not find that the lease was granted for an inadequate consideration, and although it does not find that the contracts were invalid, either because not authorized by law or because made without competitive bidding, and although it finds that the contracts were the acts of Secretary Denby, it uses evidence introduced in connection with those issues from which to draw inferences as a further basis from which to infer bribery.

Under the heading of fraud, the Court of Appeals, after stating that it has the same right to draw inferences from all the circumstances appearing in the record, as did the trial court, states that it will proceed to "a somewhat extended examination of this record, and attempt to sift from the mass of evidence the important and relative parts" (R. 818).

It may be well to recall and to bear in mind throughout the following discussion that the District Court found no fraud of any kind upon the part of any officer of the Government, and that as to every officer, save and excepting Secretary Fall, the Court of Appeals concurred. Its concurrence is found in the statement by the Court of Appeals of the charge which it adopted and sustained:

> "There is no charge of corruption in this case as to any of the officials of the Government except as to former Secretary of the Interior, Albert B. Fall. It is the theory of the Government, bluntly stated, that Secretary Fall received from Harry F. Sinclair * * *" (R. 816).

(a) The Executive Order.

Although the Court of Appeals concurs in the finding of the District Court that the Executive Order was legal and did not remove the control of the reserves from the Secretary of the Navy in such a way as to violate the Act of June 4, 1920 (R. 815), it finds in the promulgation of the order a fact from which to draw sinister inferences. Although the record shows that the order originated with Secretary Denby (R. 308), against whom no charge of corruption or fraud is made, the Court of Appeals states that whether it originated with Denby or was suggested by Secretary Fall "is a matter of conjecture." It says:

> "It is certain that Secretary Fall was not only willing, but anxious, that such suggestion of Secretary Denby be carried out. He prepared an order for the President to sign. * * * The question of its legality was not submitted to any attorney of the Navy or Interior Department, or the Department of Justice" (R. 819).

There is nothing in the record from which to infer that Secretary Fall was anxious that the Executive Order be made. The Executive Order was prepared, not by Secretary Fall, but by Judge Finney (R. 306, 406-7) who was a lawyer and who had had long experience in the adminis-

tration of the public land laws (R. 300), and against whom no charge of corruption or fraud is made. This was fully seven months prior to any meeting or contact between Secretary Fall and Mr. Sinclair (R. 323). The bill averred that Fall had fraudulently obtained the Executive Order to enable him to deal with Naval Reserve No. 3 to the advantage and profit of Mr. Sinclair (R. 5, 6). In spite of the fact that the Government introduced no evidence to support such a charge, and indeed expressly abandoned the charge at the trial (R. 250), the Court of Appeals by conjecture and in contradiction of record facts, and in violation of such principles of law as were enunciated by this Court in *United States* v. *Chemical Foundation* (*supra*, page 34), seems to find that the promulgation of the Executive Order supports its inferred conclusion of bribery.

(b) The Alleged Dominance of Secretary Fall.

Although the Court of Appeals finds as a fact, in concurrence with the District Court, that enough control was exercised by the Secretary of the Navy through Admiral Robison to preclude it from holding that the power granted by the Act of June 4, 1920, to the Secretary of the Navy, had been assumed by Secretary Fall (R. 815), it draws inferences, some from unrelated facts, some from matters shown by the record not to be facts, and some from facts not in the least supporting such inferences, that Secretary Fall dominated Secretary Denby, Admiral Robison and other Government officers and practically controlled the action of the Navy Department as to the leasing of Teapot Dome (R. 820), all as a further basis for the inference that Sinclair bribed Fall. It states:

"While Admiral Robison represented the Secretary of the Navy and took some part in negotiations leading up to the leasing of Naval Reserve No. 3, he generally coincided with the views of Secretary Fall. After Robison explained them to Secretary Denby, he likewise quite generally acquiesced therein. Secretary Denby was not present at any of the conferences with Sinclair or others in regard to leasing Teapot Dome. So far as he was concerned the idea of opening Teapot Dome as a whole had not been considered or conceived. He never met Sinclair prior to the time of the signing of the lease. His part seemed to consist merely in consenting to the plans and purposes originating with Secretary Fall" (R. 819).

Admiral Robison was appointed by Secretary Denby to take charge of all naval petroleum matters on October 8, 1921 (R. 570-71). Thereafter he acted as Secretary Denby's personal representative in all matters in connection with the reserves (R. 583). He immediately began a study of naval petroleum matters by an examination of the Navy's files and records and by consultations with Commander Stuart who had theretofore had charge of such matters and with Interior Department officials (R. 573-74). The administration of the reserves was the "principal job" that Admiral Robison had; it was but one of Secretary Denby's jobs (R. 585).

It was Admiral Robison against whom no charge of corruption or fraud is made, who first concluded that Naval Reserve No. 3 should be leased, not Secretary Fall, and it was upon his recommendation that Secretary Denby decided to lease the reserve (*supra* p. 28). We have hereto-

fore shown that Admiral Robison had an active part in and maintained supervision over the negotiations which resulted in the lease to Mammoth Oil Company; that he kept Secretary Denby informed of all matters as the negotiations progressed; and that he went over the lease word for word with Secretary Denby before the latter signed it (*supra* pp. 28-9). When Congressman Mondell discussed the lease with Admiral Robison he was impressed with Robison's familiarity with it (R. 395).

In the face of its own statement that "It was proper, of course, for the Secretary of the Navy to act through competent subordinates. Of necessity this must be so" (R. 815), why should the Court of Appeals draw sinister inferences from the fact that Secretary Denby did that very thing? Without regard to the relative parts played by Admiral Robison and Secretary Fall in the matter, might not Secretary Fall, if he was willing to do so, act as a subordinate of Secretary Denby in respect of the naval petroleum reserves at the request of Secretary Denby and with the concurrence of the President, even as Admiral Robison was such a subordinate?

In reference to Secretary Fall, the Court of Appeals says:

> "As early as July, 1921, he wrote Edward L. Doheny referring to the Secretary of the Navy:
>
> "'He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau of his department, but only with himself and such consultation will be confined strictly and entirely to matters of general policy'" (R. 820).

Just preceding the excerpt of the letter quoted by the Court of Appeals, is the following language:

> "There will be no possibility of any further conflict with Navy officials and this Department, as I have notified Secretary Denby, that I should conduct the matter of naval leases under direction of the President without calling any of his force in consultation unless I conferred with himself personally upon a matter of policy" (R. 313).

This letter was written to Mr. Doheny in expressing appreciation of Doheny's action in giving up eight of twenty-two wells leased to him in order that Secretary Fall might effect a settlement with the United Midway Oil Company of an application for compromise and settlement of placer mining claims in Naval Reserve No. 1 made by it under the Act of February 25, 1920. The United Midway application was not a Navy Department matter, either under the Act of February 25, 1920, or the Act of June 4, 1920. In connection with that application, Secretary Fall had had trouble with Commander Stuart of the Navy Department (R. 277). Secretary Fall considered that Stuart had been insulting to him in his own office (R. 603). The letter to Doheny was written by Secretary Fall long before Admiral Robison assumed charge of the naval petroleum reserves and, of course, long prior to any thought of leasing Naval Reserve No. 3.

What Secretary Fall *did* in connection with the negotiation of the Teapot Dome lease in February, March and April, 1922, precludes the drawing of any inference from what he wrote in July, 1921, in reference to an entirely different matter.

The Court of Appeals likewise refers to and quotes a letter dated July 23, 1921 from Secretary Fall to Secretary Denby (R. 799). That letter shows on its face that it had to do only with certain leases already made in the naval reserves in California. It does not refer to any lease in Naval Reserve No. 3 nor does it indicate any intention to make any such lease. Even as to the matters covered by it, it shows Secretary Fall asking the Navy to advise him of its policy and offering his services to consummate such policy, all as contemplated by the Executive Order.

The Court of Appeals also refers in this connection to a letter dated October 25, 1921 from Secretary Denby to Secretary Fall and quotes a single paragraph therefrom:

> "That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only" (R. 819).

Referring to that paragraph of the letter, which was paragraph 7, and also to paragraph 6 mentioned in paragraph 7, Admiral Robison, who prepared the letter for Secretary Denby's signature (R. 617), testified:

> "I may say that these paragraphs were not intended to apply at all to Reserve No. 3. At the time this letter was written the development of Naval Petroleum Reserve No. 3 was not contemplated and was distinctively forbidden by paragraph 9, which relates solely to Reserve No. 3, and reads
>
> '9. That the development of Naval Reserve No. 3 is not to be undertaken except to protect the

Government against depletion of the Reserve by other parties.'

The last phrase was put in to provide against future contingencies. We did not know what contingency might arise which would in any way affect the reserve. Paragraph 7 above quoted had reference to leases under the Leasing Act of February 25, 1920, which gave to the Secretary of the Interior control of producing wells within the naval reserve proper. Leases covering those wells were pending, claims were pending for other properties in the reserves, under the old acts that had been in force. Before the 25th of February, 1920, it had been the policy of the two departments to have all leases referred to the Secretary of the Navy prior to their execution by the Secretary of the Interior, leases that were to be granted under this act of the 25th of February, 1920. It was decided, and paragraph 7 was intended, to put into effect the idea that the Secretary of the Interior should make his decisions and to keep us informed of his decisions. We had not anything to do with the decision,—that is the decision with respect to leases under the Act of February 25, 1920. I think paragraph 7 is not very well drawn, but that was the idea of it" (R. 575-6).

The letter of October 25, 1921, with the exception of paragraph 9 thereof, above quoted in Admiral Robison's testimony, shows on its face that it had to do only with the naval reserves in California and plans in connection therewith (R. 281-3).

Paragraph 9 of the letter resulted from the conference between Admiral Robison, Secretary Fall, Dr. Bain and

Mr. Ambrose held about October 23, 1921, as we have hereinbefore shown (*supra*, pp. 23-5), primarily in respect of the California reserves, but at which it was decided in respect of Naval Reserve No. 3 that the data Dr. Bain and Mr. Ambrose had seen in Denver early in September, taken in connection with the Wegemann Report submitted in the latter part of September, required an investigation and study of the question of drainage.

The Court of Appeals stresses the above mentioned letters of July 8, 1921, July 23, 1921 and October 25, 1921, all of which were written long before the decision to lease Teapot Dome was made, but does not point to a single instance showing, or from which it might be inferred, that Secretary Fall attempted to dominate Secretary Denby or Admiral Robison *in the making of the Teapot Dome lease itself*. But why discuss scraps of evidence purporting to show that Secretary Denby did not in effect operate as required by the Act of June 4, 1920? The Court of Appeals itself has considered all of this evidence with other evidence in the case and has concurred with the District Court in finding that Secretary Denby did perform as required by the Act. If he did, how can these letters be used as evidence that Sinclair bribed Fall?

The Court of Appeals further states:

> "With the Secretary of the Interior rested the right under the lease to suspend operations temporarily under the law; to consent to a termination of the lease or an assignment thereof, to place the value on gas and casinghead gasoline. Practically all discretionary power under the lease was vested in Fall" (R. 820).

The Court will see from the terms of the lease itself that the really important discretionary powers under it were not delegated to Secretary Fall but were vested in the lessor, the United States of America. See also testimony of Admiral Robison (R. 650-1). As to the matters that were delegated to Secretary Fall in the provisions of the lease referred to by the Court of Appeals, Admiral Robison testified:

> "The possible assignment of this contract was discussed with Denby. I told him that I thought the general position of the Secretary of the Interior regarding the Naval Reserve property at all times was that of a subordinate to himself * * *, that the actions of the Secretary of the Interior were controllable by the Secretary of the Navy so far as Naval Petroleum Reserve matters were concerned, except, of course, those particular matters specifically given to the Secretary of the Interior by the law" (R. 634).
>
> "If we could have secured no degree of co-operation from the Interior Department we would have been in trouble, but I didn't count on any complete breakdown of any Department of the Government" (R. 636).

(c) The Question of Drainage.

Both the District Court and the Court of Appeals construed the purpose and policy of the Act of June 4, 1920 to be in accordance with what seems to us the view of this Court to the extent announced in the recent case of *Pan American Petroleum & Transport Co.* v. *United States*, decided February 28, 1927.

The District Court said:

> "Lying adjacent to the great Salt Creek field where the leases were being granted by the hundred, or about to be, Congress realized, judging by the text of the Act of June 4th, that there was danger on account of this intense leasing, of drainage and a loss in the naval reserves themselves, and in consequence passed the act as a remedial measure for the purpose of taking the oil out if found necessary to save it" (R. 269).

The language of the Court of Appeals is:

> "The purpose of the Act of June 4, 1920, was to preserve the oil in these naval reserves for the benefit of the Government in such manner as Congress at that time deemed wise, viz., to place the matter almost exclusively in the hands of the Secretary of the Navy. It is of vital importance that the Government's oil in these reserves shall not be drained away for the benefit of private enterprise, but that it shall be preserved in the interest of national defense" (R. 811). • • •
>
> "• • • If he shall determine that the oil cannot be properly conserved within the ground, then he has the right to develop, use and operate the properties directly or by contract, lease or otherwise" (R. 812).

With that view of the statute, the sole question left to the District Court and the Court of Appeals to decide was: **Was Secretary Denby's decision that there was danger of drainage arbitrary or capricious or wholly unsupported by evidence?** *Silberschein v. United States*, 266 U. S., 221.

This is a question of fact and upon it the Court of Appeals concurred with the District Court in finding that the lease to the Mammoth Oil Company was within the authority of the Act of June 4.

Despite such concurrence and its construction of the Act of June 4, the Court of Appeals found in connection with the question of drainage, matters from which to draw inferences that Sinclair bribed Fall. In its discussion of the subject, that court conjectures happenings at convenient places in the chronology of events and the conjectured happenings constitute the chief basis for the sinister inferences drawn by it; it also misplaces events in the chronology and by reason of such misplacing, finds grounds for sinister inferences; again it omits from the chronology important happenings and through this omission draws sinister inferences which it otherwise could not draw.

Referring to Secretary Fall's trip to the Pacific coast, which lasted from July 31st to October 4th, 1921, which is shown by the record to have had no connection with any matter pertaining to Naval Reserve No. 3 (R. 669; 281), the Court of Appeals says:

> "The record does not show whether or not Fall met Sinclair in the West, but it is significant that upon his return the question of drainage in Teapot Dome, and the danger therefrom were again agitated. This had been considered prior thereto by some of the Government officials and a report had been made thereon by one Carroll H. Wegemann, at that time connected with the Department of the Interior" (R. 821).

Although the record does not contain a syllable of evidence upon which to base an inference that Mr. Sinclair met or even knew Secretary Fall prior to December 31st, 1921, the Court of Appeals conjectures that Secretary Fall saw Mr. Sinclair on his trip west.

Furthermore, the question of drainage in Teapot Dome originated, so far as Government officials are concerned, not with Secretary Fall, but with Director Bain and Chief Petroleum Technologist Ambrose of the Bureau of Mines (against neither of whom is any complaint made) while Secretary Fall was on his trip, as we have hereinbefore shown (*supra* pp. 21-3), and it was not as stated by the Court of Appeals "again agitated" for the reason it had never been agitated before.

Secretary Fall returned to Washington on October 4th, 1921 (R. 669), but no question of drainage of Teapot Dome was raised until Dr. Bain and Mr. Ambrose returned on October 23rd, 1921 (R. 663). As shown hereinbefore (*supra* pp. 23-5), at a conference held about that date, primarily in respect of Reserves Nos. 1 and 2, there was a general discussion of drainage and its causes (R. 663) and Dr. Bain and Mr. Ambrose stated what they had learned in Denver as to Reserve No. 3 (R. 664). It was determined at the conference that the data which Dr. Bain and Mr. Ambrose had seen in Denver, taken in connection with the Wegemann report, warranted a further investigation and the representatives of the Bureau of Mines were instructed to make a study of the matter (R. 665).

The Court of Appeals proceeds:

> "As a result of conferences it was decided to send some one to make an examination as to the question

> of drainage, and through the Bureau of Geological Survey one K. C. Heald was selected therefor. His report indicated no immediate danger of drainage. After this no one in the Geological Survey was further consulted on the subject. Director H. Foster Bain of the Bureau of Mines, and also Arthur W. Ambrose, Chief Petroleum Technologist of the Bureau of Mines, likewise gave some attention to the matter. They made a trip to the West and consulted with C. A. Fisher, a Geologist, and also with Carroll H. Wegemann, who was then out of Government service" (R. 821).

The trip of Dr. Bain and Mr. Ambrose is thus misplaced as to time and their part in the question of drainage is made to appear unimportant and insignificant as compared to that of Heald. As we have hereinbefore shown (*supra* pp. 25-8), Heald had and performed one function, and Dr. Bain and Ambrose had and performed an entirely separate function, one of much greater importance than Heald's.

In the face of the record facts, which we fully reviewed in the statement of events leading to the decision to lease Naval Reserve No. 3 (*supra*, pp. 20-8), and which are nowhere contradicted, showing the prominent parts played by Dr. Bain and Ambrose in the matter of drainage and showing the minor part played by Secretary Fall in the matter and in the decision to lease Teapot Dome, the Court of Appeals infers that drainage was found acute only after Fall returned from Three Rivers where he was "visited" by Sinclair.

The Court of Appeals impliedly finds much to criticize in Admiral Robison's acceptance of the advice of Dr. Bain

and Mr. Ambrose as to drainage and construes the Heald report as indicating no immediate danger of drainage, and in that connection seems to think it noteworthy that after the Heald report no one in the Geological Survey was further consulted on the subject.

Heald's report had confirmed Wegemann's correction of the position of the saddle and had stated that instead of two separate domes in the Teapot structure it was probable there was a single faulted dome (R. 318). He reported "that quite a bit of the reserve was liable to be drained" (R. 319), but recommended that leasing be limited to certain specified sections of the reserve (R. 112). The confirmation of the Wegemann report was the only significance Admiral Robison attached to the Heald report (R. 605). Mr. Heald was a geologist, not a petroleum engineer; he did not have the data later collected and studied by Dr. Bain and Mr. Ambrose and upon which they based their conclusions as to drainage. His report did not indicate he had given any consideration to the question whether the saddle contained oil or water or to any question of depletion through loss of gas pressure. His testimony shows that he did not consider those questions but that he concerned himself merely with checking certain outcroppings of bentonite that showed a dip at a particular point sufficient to confirm Wegemann's data (R. 319, 323). Indeed, having spent only four hours on the land (R. 319), how could he have had time for anything more, even if he had been qualified to report on other factors that enter into the question of drainage?

On his cross-examination Admiral Robison frankly stated that he had not consulted Dr. George Otis Smith or

others of the Geological Survey because he attached more value to Dr. Bain's opinion on the question (R. 606). He further testified on cross examination by the Government:

> "I set great store by geologist's reports but I do not think they have much value after mining operations begin. For instance, at the time Teapot Dome was set aside, when the development of Salt Creek was small comparatively, the Teapot Dome reserve had its area delimited, and I think properly, by geologists. After it was opened the question of drainage of Teapot Dome into Salt Creek was one that became acute as a result of actual mining operations in the Salt Creek region, and the geologist's opinion no longer was of the tithe of the value of the opinion of the mining engineer in my opinion. Dr. Bain gave me an opinion on this subject, but in basing my decision on his opinion I did not look into his oil experience. I did not know that he had no oil experience before he came with the Government. I knew he was Director of the Bureau of Mines in the Interior Department and Chief Technical Mining Expert of the country. I conceived him, and do conceive him to be the best possible authority that I have access to" (R. 644).

The sentence in the above quotation to the effect that Admiral Robison did not know that Dr. Bain had no oil experience before he came to the Government was based, in making the abstract of the record, upon the language used by the cross-examiner in his question. As a matter of fact, while Dr. Bain testified that he was never "an oil expert in a special oil practice" (R. 658), he had had long experience before entering the government service on Jan-

uary 1, 1921 in matters connected with the development of oil fields, "methods of technology and things of that sort" (R. 657).

Moreover, the Bureau of Mines had the benefit of the knowledge and experience of experts and specialists, employed by it, who had devoted a great deal of time and thought to and had done much experimental and research work in connection with drainage problems—the presence of water in sands, gas pressure, etc. (R. 660-2).

Dr. Bain likewise stated that the Bureau of Mines did not consult the Geological Survey because he considered that the question was within their own field (R. 697). Though Heald assumed to specify sections of the reserve to be leased, his testimony shows that he did not even know just what lands the reserve included and his report contains numerous errors in that respect (R. 319).

Subsequent events proved that Admiral Robison was wise in his choice of advisors. The biggest wells that came in on the Naval Reserve were in that part which Heald in his report stated must be regarded as one of the poorest portions (R. 667).

Dr. Bain in a memorandum dated March 24, 1922, shows in respect of several typical oil fields that serious losses in ultimate yield of an oil property result from delay in drilling up the property while adjacent properties are being drilled and that the nearer the wells are to the land being drained, the greater the loss (R. 679-83). In another memorandum of the same date he shows how much the Navy had lost in Naval Reserve No. 2 in California from inability to drill wells therein prior to the passage of the Act of February 25, 1920, and how much it had lost

in royalty oil from both California reserves by delay in drilling offset wells prior to March 4, 1921 (R. 677-79). The subject matter of these memoranda had been discussed prior thereto (R. 683) and Admiral Robison believed the Navy had suffered a loss of several millions of dollars by delaying too long in putting down offset wells in California (R. 645).

The Court of Appeals proceeds:

> "After Fall's return in January from his home in New Mexico, where he was visited by Sinclair and his counsel, Col. Zevely, the drainage question was again taken up and it was concluded that it was acute. Secretary Denby under Robison's presentation of the question finally became convinced and agreed to the development of Teapot Dome as a whole" (R. 821-2).

When the Court of Appeals here says that the drainage question was *again* taken up, it is unmindful of the sequence of events clearly disclosed by the record. The question had been taken up at the October 23, 1921 conference (*supra*, p. 23). It was taken up, not at the instance of Secretary Fall but at the suggestion of Dr. Bain and Mr. Ambrose, neither of whom is charged with corruption or fraud and both of whom testified as to the manner in which the question originated (Bain R. 662; Ambrose R. 702). Having been taken up at that time, the question had not thereafter been dropped but Dr. Bain and Mr. Ambrose were directed to investigate, study and report on the matter (*supra*, p. 24). Pursuant thereto Mr. Ambrose collected data and made a detailed study (R. 703) and dis-

cussed his data fully with Dr. Bain (R. 665; 692-3). Secretary Fall was absent from Washington from December 1, 1921 to January 27, 1922 (R. 298). Before he returned Dr. Bain and Mr. Ambrose had reached their conclusion (R. 665; 692-3) and upon his return were ready to report. In view of this perfectly natural chain of events, why seek a sinister inference from the circumstance that Mr. Sinclair saw Secretary Fall in Three Rivers, New Mexico, on December 31, 1921? Not until that date did Mr. Sinclair know that an investigation of drainage was being made. As we have seen, Mr. Sinclair had gone with his counsel to Three Rivers to see Secretary Fall on business connected with Osage Indian leases and while there had made an inquiry as to whether Teapot Dome would be leased, to which Secretary Fall replied, in accordance with the facts as shown by the record, that an investigation was being made upon which the matter would be determined (R. 323). Neither before nor after Mr. Sinclair's trip to Three Rivers, does the record show that Secretary Fall attempted to interfere with or influence Dr. Bain and Mr. Ambrose in their investigation of the subject of drainage or their conclusions thereon. Moreover, after they reported to Admiral Robison and Secretary Fall their conclusions on the subject at the conference held late in January, Secretary Fall did not assume or attempt to tell Admiral Robison what to do, but asked "What are you going to do about it?" (R. 645). And as indicated in the language of the Court of Appeals last above quoted, Secretary Denby decided to lease Reserve No. 3 upon presentation of the question of drainage, not by Secretary Fall but by Admiral Robison who is not charged with corruption or fraud but

who this record clearly shows, is the officer of the Government responsible for the conclusion that Teapot Dome should be leased and for taking that conclusion to Secretary Denby for decision.

The Court of Appeals goes on to say as to drainage:

> "That there was remote danger of drainage of a portion of Teapot Dome by virtue of leases in the adjacent Salt Creek field is apparent from the record. However, the evidence clearly establishes that there was no immediate danger, and no need for haste. The drainage danger was unquestionably not imminent enough to force immediate action in the leasing of the entire property. It was a matter of five years or more, according to some of the testimony. At no time was the oil in the first Wall Creek sand, estimated to contain between fifty and fifty-one million barrels of oil, in danger of drainage" (R. 822).

Fear of drainage of the first Wall Creek sand played no part whatever in the decision to lease Teapot Dome. The drainage question raised and discussed was entirely in respect of the second Wall Creek sand (R. 691) which was estimated to contain approximately eighty-five million barrels of oil (R. 338). There was, of course, no way to reach the second Wall Creek sand without drilling through the first.

As to the second sand, Dr. Bain and Mr. Ambrose advised Admiral Robison that the reserve was subject to drainage and that it would become more so as time went on, that they could not tell how far the drainage would extend and could not be positive that it would not extend indefi-

nitely (R. 665-6). Thereupon, Admiral Robison determined to take no chance of losing oil by delaying development and to recommend the leasing of the reserve because, as he stated to Secretary Denby, "Complete protection of our property could be secured with certainty only by complete development" (R. 584).

In its statement that "it was a matter of five years or more, according to some of the testimony," the Court of Appeals refers to the *end* of drainage. What Admiral Robison was seeking to guard against was the very beginning of any loss of the Navy's oil.

The Court of Appeals continues:

> "It was not until the full scheme of development of the entire reserve, with its attendant features, was suggested and became visualized, that these fears of drainage became acute" (R. 822).

When in the latter part of October, 1921, the Navy determined upon certain projects in respect of the California Reserves, it was expressly stated in the so-called policy letter of October 25:

> "That the development of Naval Petroleum Reserve No. 3 is not to be undertaken except to protect the Government against depletion of the reserve by other parties" (R. 282, par. 9 of the letter of October 25, 1921).

There is not a syllable of evidence in the record that "the full scheme of development of the entire reserve, with its attendant features" was suggested or became visualized prior to the conference held late in January when it was

determined by Admiral Robison that the reserve should be leased to protect the Government against depletion and loss.

Admiral Robison expressly stated on his cross-examination by the Government that it was only after he became aware of the probability of drainage of Teapot Dome that he thought the Navy was justified in opening up that reserve (R. 646). But having concluded to lease the entire reserve to make complete protection certain (R. 584), Admiral Robison decided that the lease would be made to one party in order to secure certain features which would insure to the Government that the development of the reserve would be for the use or benefit of the Navy as contemplated by the order creating the reserve.

(d) The Supposed Celerity of Sinclair's Proposition of February 3d, 1922.

The Court of Appeals proceeds:

> "On February 3, 1922, Sinclair and Zevely were at Secretary Fall's office. Robison was called in and requested to present the demands of the Navy in a lease of Teapot Dome. He did so, covering the question of a pipe line and of storage facilities to be constructed in exchange for royalty oil. Something was said concerning oil certificates in lieu of cash to avoid covering the cash into the Treasury of the United States. It is significant that after this meeting, *and on the very same day*, Sinclair submitted a complex, tentative proposition, setting forth the terms and conditions upon which he would undertake the development of Teapot Dome, etc." (Italics supplied) (R. 822).

In this the Court of Appeals finds significance in a matter shown by the record not to be a fact. The truth is that the "demands of the Navy" were explained to Mr. Sinclair by Admiral Robison in the latter part of January, subsequent to January 27th but "about four days prior" to the submission of his proposition (R. 589, 612). This is the only evidence on the subject. "About four days" was abundant time for Sinclair to prepare his "complex" proposition, which was in the form of a letter barely over two pages in length, and which was a mere tentative general outline of a basis for negotiations (R. 324-26) along the lines Admiral Robison had stated as the requirements of the Navy (R. 612-13).

(e) The Matter of the Pioneer and Belgo Claims.

Under the Act of June 4, 1920, the Secretary of the Navy could not lease any lands in the naval reserves which were embraced in pending applications for lease under the Act of February 25, 1920. Of such applications the Secretary of the Interior had jurisdiction.

In connection with the general investigation as to the danger of drainage in Naval Reserve No. 3, pursuant to the conference between Admiral Robison and Interior Department officials held in late October, 1921, Secretary Fall instituted an inquiry as to pending applications for leases on Naval Reserve No. 3 (R. 329).

It developed that the Pioneer Oil and Refining Company was in possession of a large portion of the reserve, claiming that possession by reason of location and discovery of oil under the placer mining laws, and by virtue thereof

had made four applications for leases under Section 18 of the Act of February 25, 1920, covering three quarter sections in Section 3 and one quarter section in Section 10 of Township 38 North, Range 78 West, and an application for compromise under Section 18a of the Act of February 25 covering many additional tracts in the reserve (R. 330-1).

Roy W. Tallman, an employee of the General Land Office, who prepared a report on the Pioneer applications for leases, based on other reports he found in the General Land Office (R. 333, 335), stated in his report that they had been rejected and the cases closed (R. 330-1) but Secretary Finney testified that the applicants had filed a petition asking for the exercise of supervisory authority by the Secretary; that he had set the petition down for hearing in September, 1921, but prior to that time advised attorneys for the applicants that the hearing before him would not be held but would be held before Secretary Fall at some later convenient date (R. 303). The matter rested in that situation (R. 303) and therefore the Pioneer's applications for leases were pending when the Navy decided in January, 1922, to lease the reserve.

Said applications had been denied originally by Secretary Payne on the ground that the wells were not "discoveries" (within the meaning of that term as applied by the Interior Department) and Finney, apparently on the same ground, expressed his opinion to Fall that the claims for leases had no authority (R. 286). Tallman's report expressed the same opinion (R. 329-32). This report was introduced in evidence, not as proof of the matters contained therein, but simply as showing what information

went to Secretary Fall (R. 329). Tallman testified that all his report contained was compilation from the reports of others; so far as he was concerned, all of it was hearsay (R. 336) except that he was on the lands in 1920 and saw some wells there and a tank with some oil in it. He did not know one way or the other whether the claims had been continuously possessed from the date of their location until the wells were drilled (R. 335). Tallman in his report, transmitted another report made by Glenn B. Morgan which was similarly offered, not as substantive evidence of what it contained, but as showing information going to Secretary Fall (R. 292-3). While Morgan's conclusions were that there were no valid titles to lands in the reserves (R. 297), he stated:

> "* * * yet it is also true that this company" (naming a predecessor in interest of the Pioneer Oil Company) "has established itself upon the Naval Reserve, and has expended large sums thereon and it is likewise a matter of common knowledge that the said outfit intends to remain in possession and control until ejected by the courts or until the land titles are finally adjudicated.
>
> "2. Although no application for patent has so far been submitted for lands in the Reserve by this or any other claimant, it would be folly to assume that they would not attempt to set up early discoveries as the basis for their claims (R. 294).

Morgan's report was made July 26, 1917 in connection with the validity of titles under the placer mining law, long before the Act of February 25, 1920, with its relief and

compromise provisions for the benefit of claimants who could not establish *in the General Land Office* their absolute right to titles.

Secretary Fall did not, as averred in the bill, express a belief that the Pioneer and Belgo claims were worthless. On the contrary he told Gerald Hughes that he had always had serious doubt as to whether Secretary Payne's ruling on the applications for leases was correct; that at any rate it was up before him again and he believed there was considerable equity in the claims and that undoubtedly the people that held them would want to go to court and he thought it was better to clean them up (R. 714-15).

The Court of Appeals states roundly:

> "It was the Government's business to dispose of" the claims of the Pioneer and Belgo Companies (R. 823).

In this the Court of Appeals was in error both of fact and law. The Court confuses the two separate and distinct claims of right on the part of the Pioneer and Belgo. Stated inversely in the order of time:

First, the Pioneer Company had made applications for leases under the Act of February 25, 1920; and

Second, in addition to such rights as the Pioneer Company had under its applications for leases, the Pioneer and Belgo companies were in possession of the land and claiming that possession by reason of location and discovery of oil. This is made entirely clear by the report of Glenn B. Morgan introduced by the Government (R. 292-298, especially 293).

Judge Finney on the same matter, testifying for the Government, states that:

> "There were three or four oil wells drilled on top of the structure by the Pioneer, I think, and they had applied for a lease, basing that on these wells. The application would be under the Act of February 25, 1920, *but they based their claim on alleged prior location*,—the Belgo titles as we called them" (italics supplied) (R. 286).

It will be remembered that the Act of February 25, 1920, provided that "valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated * * * may be perfected under such laws, including discovery" (41 U. S. Stat. L., 451, Sec. 37).

The Secretary of the Interior might indeed have set down for hearing the applications made by the Pioneer for preferential leases under the Act of February 25, 1920, and upon such hearing have disposed of the applications, but such action would not at all have affected the claims of the Pioneer to rights in the land growing out of its prior locations. And that they were asserting such rights is shown not only by the above testimony of Judge Finney, but also by the Morgan report itself mentioned by the Court of Appeals.

The report points out that owing to the situation on the ground, there will be great difficulty in disproving claims of discovery. The report recommends that suit be brought against the claimants in the Federal District Court (R., 297). Such a suit would require months, perhaps years,

for its final determination. To carry out what the Court of Appeals speaks of as "the Government's business to dispose of the claims", the Government would either be required to bring such a suit as recommended or to wait until such time, near or remote, often many years, often never, when the claimants might choose to apply for patent. In relation to such application for patent, if the discovery of oil, as shown by Secretary Finney—and the discovery, as shown by Mr. Tallman, of oil sufficient to fill a tank twenty-five feet in diameter to a depth of three feet—should not prove sufficient discovery,—the Act of February 25th authorized the Pioneer and Belgo Companies to complete their locations "including discovery". They could, therefore, do such drilling as would discover oil in commercial quantities if that should be required in an application for patent. The Land Department of the Government had long been familiar with the delays and difficulties in such matters, and in the case of the lands here in controversy, with the evidence of drainage and threatened drainage that was laid before the Secretary of the Navy and the Secretary of the Interior, the only way to promptly and effectively protect the Government was the method chosen, viz., the method of requiring titles to be so cleared that the lessee could go on without molestation in taking out the oil and paying to the Government its proper portion thereof. Owing to the difficulties and delays of any other course, it had been usual in the Interior Department to require quitclaim deeds before granting leases (R., 303).

The Court of Appeals infers that Secretary Fall used the Pioneer and Belgo claims as "instrumentalities to prevent a square deal" (R. 823). It says:

> "Of course, making the acquisition of these claims a prerequisite of any lease, when Sinclair either had them or was in a preferred position to secure them, was a fraud as to other bidders, and in its effect removed them from the status of qualified applicants" (R. 823).

In this the Court of Appeals apparently accepts as proven, the averment of the bill that Secretary Fall secretly advised Mr. Sinclair to acquire the Pioneer and Belgo claims and *after* Mr. Sinclair had done so, made the obtaining of the claims a condition precedent to receiving any offer for a lease from any other person (R. 9). There is not a syllable of evidence to support such an averment and the inferences as to the matter drawn by the Court of Appeals are in contradiction of the record. The true facts are as follows:

Sinclair in his tentative proposal of February 3, 1922, had offered to "undertake to quiet all outstanding claimants' titles on this Reserve No. 3, thereby enabling the Government to make a contract now which will be free from controversy", it being his "understanding that existing outstanding claims have as great merit as some of those by reason of which the department has recognized equities and granted rights" (R. 325). Not until March 10, 1922, five weeks after Mr. Sinclair had offered to quiet all claims, did he acquire the Pioneer claims (R. 345), and then he acquired them only conditionally. The Government offered no evidence whatever tending even remotely to show that Secretary Fall had anything to do with Sinclair's acquisition of the claims from Pioneer. The Pioneer

Company had itself contemplated applying for a lease of the reserve under the Act of June 4 (R. 345) but when on or about March 8, 1922, it found that its bid could not be made high enough to meet Sinclair's bid (R. 347), it entered into negotiations for the sale of its claims to the Mammoth Oil Company. A contract was made whereby Pioneer agreed to relinquish its claims to Mammoth and Mammoth agreed "in the event it shall secure a lease upon said lands", to pay to the Pioneer Company two hundred thousand dollars represented by a note for eighteen months, and eight hundred thousand dollars in addition thereto out of one-third of the gross production of oil from the lands.

The Pioneer and Belgo Companies then gave quitclaim deeds to the Mammoth Oil Company and Mammoth in turn gave a quitclaim deed to the United States (R. 344), attaching all the deeds to its formal application for lease (R. 343).

The quitclaim deeds given by the Belgo and Pioneer Companies were made in the same way that the Mammoth Oil Company made its quitclaim deed to the Government, to be returned in case not used, and the contract and conveyances were conditional, the condition being that if Mammoth did not get a lease, the conveyance would be returned (R. 347).

That was the understanding that Mr. Beaty of The Texas Company had in respect of the matter. He felt that if his company should obtain a lease, it could acquire the Pioneer claims and he so stated to Secretary Fall. The conditional relinquishment of the Pioneer claims to Sinclair was not an obstacle to his bidding (R. 349-50, 353) and there is no evidence that anyone else was precluded

from bidding because of Sinclair's conditional acquisition of such claims.

Indeed, the Court of Appeals in one paragraph finds that the Pioneer and Belgo companies "made an optional sale to Sinclair contingent upon his obtaining the lease" (R. 822) and then in the second succeeding paragraph asserts in the face of its first finding, that "it clearly appears that Sinclair was in a position of advantage by reason of the assignment to him of the placer mining claims which Secretary Fall made a condition precedent to leasing" (R. 823).

(f) The Alleged Exclusion of Other Bidders.

The Court of Appeals, though it concurs in the findings of the District Court that advertisement and competitive bidding were not required by the law and impliedly at least that the lease was advantageous in its terms to the United States, draws inferences against the Mammoth Oil Company from Secretary Fall's treatment of others desirous of obtaining a lease.

The bill of complaint averred that the Texas Company, the Pioneer Oil Company, Edward L. Doheny, Leo. A. Stack, and other persons and corporations of standing and responsibility, were desirous of obtaining a lease but were denied an opportunity to do so by Secretary Fall, with the knowledge of Mr. Sinclair who was conspiring with Secretary Fall to that end.

There was no evidence whatever in connection with the latter part of the averment that Mr. Sinclair had any knowledge of any alleged denial by Secretary Fall of the

right of others to bid or that he was conspiring with Secretary Fall to that end.

As to others who, as the bill alleges, desired to bid but were denied that right by Secretary Fall, the evidence is as follows:

The Texas Company.

On March 31, 1922, Amos L. Beaty, President of The Texas Company, conferred with Secretary Fall in reference to a lease of Naval Reserve No. 3 (R. 348). Secretary Fall informed him that he had a satisfactory proposition from Sinclair but would be glad to have The Texas Company also submit a proposition (R. 348-9). Beaty stated to him the substance of what his company would be willing to do as to royalties and exchange of fuel oil for crude oil (R. 349).

Secretary Fall discussed Beaty's proposal with Dr. Bain and Ambrose (R. 667) and Bain and Ambrose compared the royalties offered by Beaty with those offered by Sinclair and it was their judgment that the Sinclair royalties would bring in more to the Government because they were higher on everything above one hundred barrels and at that time they were confident of getting large wells on the naval reserve (R. 668).

The ratio of exchange of fuel oil for crude oil offered by Beaty was the same as that offered by Sinclair for fuel oil delivered at Norfolk, Virginia, and all Atlantic ports north of Norfolk. For Atlantic ports south of Norfolk, Beaty's proposal was one-eighth of a barrel more of fuel oil (R. 28, 349). But Bain and Ambrose, on the basis of their expecta-

tion as to the size of wells in Teapot Dome thought the Navy would get more fuel oil from the higher Sinclair royalties even at the lower ratio of exchange (R. 700). Secretary Fall also discussed Beaty's proposal with Admiral Robison who thought it inferior to Sinclair's proposal (R. 643, 652-3).

Moreover, the Mammoth contract permitted the Government to receive cash for its royalty oils, in which case the amount of royalties was the sole question. And besides, it should be remembered that the contract for the disposition of the royalty oils as contained in the instrument of April 7, 1922, here in controversy, provides that the Government shall receive mid-continent prices for its royalty oils, which were not less than sixty cents per barrel higher than the prices prevailing in Wyoming (*supra*, p. 36) and that Mr. Beaty's proposition for The Texas Company contained no offer to pay mid-continent prices.

The Pioneer Oil Company.

This company never made any application for a lease of Naval Reserve No. 3 under the Act of June 4, 1920 (R. 345). The secretary of the Company went to Washington on March 8, 1922, with data looking toward a proposal for a lease but he learned when he got to Washington that the bid his company was prepared to make was less favorable to the Government than the bid which had been made by Mammoth Oil Company and for that reason the bid was not submitted (R. 347).

Edward L. Doheny.

The evidence is that Edward L. Doheny of the Pan American Company had made up his mind that Naval Reserve No. 3 was entirely out of his field of operations and that he did not desire to bid for a lease on that reserve (R. 616).

Leo A. Stack.

The Government introduced no evidence that Stack ever made or desired to make an application for a lease of Naval Reserve No. 3.

James C. Crawford.

Crawford, a lawyer, called upon Secretary Fall in February, 1922, to ask if there was any possibility of Teapot Dome being leased. Secretary Fall told him that the reserve was to be developed but that he was not going to offer it publicly because he did not want to be embarrassed by a lot of irresponsible oil companies and individuals applying for a lease. As a result of this Crawford communicated with his associates and they talked with officers of The Texas Company which led to Beaty's conference with Fall (R. 402).

Texas Pacific Coal and Oil Company.

Birch Helms, an officer of this company, called on Secretary Fall about April 10, 1922, and discussed a lease of Teapot Dome (R. 382); also the sale of the royalty oil from the Salt Creek field (R. 387). Secretary Fall practically told him that he would entertain a bid (R. 383) but what

Fall had in mind was a bid on the royalty oil from Salt Creek, not a lease of Teapot Dome (R. 387). He told Helms something of the Sinclair proposition but did not say that a contract had been signed with Sinclair and Helms refrained from asking him whether or not that were true (R. 383).

Producers and Refiners Corporation.

Frank E. Kistler, an officer of this corporation, called upon Secretary Fall in March, 1922 (R. 356), and proposed to lease six hundred forty acres on each of the two geological structures embraced in the reserve, at a royalty of twenty-five per cent. Secretary Fall told him that he was not ready to consider leasing the Teapot Dome Reserve at that time and could not consider his proposition, but would give him a chance to bid if he did decide to lease (R. 356).

James G. Darden.

Darden called on Secretary Fall in the latter part of March, 1922 (R. 401). He had heard that Teapot Dome was to be leased. Secretary Fall told him that it was to be leased. Darden made no application for a lease under the Act of June 4, 1920, but claimed title to a placer mining location of one hundred sixty acres which he had acquired in 1920 (R. 400-1). Fall told him that his title was not valid but that Sinclair would settle with him if he had a claim as he had agreed to settle with all claimants. Darden told Fall that he would not take the matter up with Sinclair. Darden later attempted to assert the title and brought suit with reference to it (R. 401).

Referring to the Texas Company, the Texas Pacific Coal & Oil Company, and the Producers and Refiners Corporation, the Court of Appeals concedes that "the propositions of these various companies were not comprehensive, and were more or less fragmentary and unsatisfactory" (R. 823) but goes on to say:

> "It is obvious that disclosures to these companies of the entire plans relating to Teapot Dome were studiously avoided. Various statements were made to them that the Department had reached no decision; that the matter would later be discussed; that they would be advised when the Department was ready to act, and their attention was called to the Salt Creek Field and activities there invited. There was an utter lack of good faith in the matter" (R. 823).

The evidence shows that the Texas Company was not denied the right to bid and was not in any way hindered from bidding but that its bid was not accepted because in the opinion of Admiral Robison and Dr. Bain it was less favorable to the Government than Sinclair's bid on the basic proposition of royalties (*supra*, pages 35-6).

As to the Texas Pacific Coal & Oil Company, the misunderstanding between Secretary Fall and Mr. Helms as to what the latter desired to bid on, explains the matter, especially in view of the fact that the conversation between them occurred on April 10th, after Secretary Fall had signed and had submitted to Secretary Denby the lease in controversy.

The Producers and Refiners Corporation proposition speaks for itself and answers any question that might be asked as to why Secretary Fall disregarded it.

(g) The Shaffer Matter.

The Court of Appeals states:

> "Shaffer, a newspaper man of prominence, apparently received different treatment. He made claim that he was entitled to certain acreage in Teapot Dome, and filed a written application. Secretary Fall's influence with Sinclair was such that Sinclair offered, at Fall's request, to take care of Shaffer, not, however, to the full extent demanded. Just why Secretary Fall should interest himself in Shaffer's alleged claim which had no legal basis, is not clear, but it shows the close connection between Fall and Sinclair" (R. 823-4).

And again, as a basis for inference that there was an intimate relationship between Secretary Fall and Mr. Sinclair, the Court says:

> "Sinclair, at Secretary Fall's suggestion, after the lease was executed, arranged for a prominent newspaper publisher, Mr. Shaffer, to have some four hundred acres of the Teapot Dome lands" (R. 829).

The record facts as to Shaffer are that he already had in the name of Maryland Oil Company forty acres of land in Section 33 adjoining the naval reserve (the rest of the section being embraced in the reserve) and in addition had lands running along the border of the reserve for a mile

and a half, and had expended one hundred fifteen thousand dollars for development but unsuccessfully. By reason of this he felt that he had some preferred right of a lease of the remaining six hundred acres of Section 33 which laid in the reserve (R. 381).

In May and June, 1921, he applied for a lease of said six hundred acres (R. 359-63). At that time he was told that the reserve was not being offered for development but if it was later determined to lease the reserve, his application would be considered (R. 363). All of this was before Secretary Denby determined to lease the reserve.

On March 20, 1922, Shaffer had an interview with Secretary Fall who informed him that negotiations were being had with Mr. Sinclair for a lease (R. 365). Shaffer reminded Secretary Fall of his application and the Secretary told him that he had told Sinclair about the application and wanted him to reserve two hundred acres for Shaffer and he advised him, Shaffer, to see Sinclair (R. 365).

Shaffer did see Sinclair about March 23, 1922, and told Sinclair that he thought he was entitled to have the six hundred acres in Section 33. They came to no agreement about the matter (R. 366). In November, 1922, long after the lease had been executed to Mammoth Oil Company, Shaffer again saw Sinclair and Sinclair offered to allot to him four hundred and twenty acres under certain conditions which were not satisfactory to Shaffer. As a result no lands were ever allotted to Shaffer and nothing ever came of the matter (R. 371).

Prior to Shaffer's meeting with Secretary Fall on March 20, 1922, Gerald Hughes had told Fall that Shaffer

had said to him that he had an interest in the Pioneer titles and that some attempt had been made to turn them back to the Government without his consent and that he was very much opposed to it (R. 713-14).

The foregoing facts certainly do not sustain the averment of the bill that Secretary Fall made as a condition precedent to Sinclair's obtaining a lease, that the latter set apart certain lands in the reserve for Shaffer's benefit. Nor do they afford the slightest ground for inferences that Fall and Sinclair were on terms of intimacy.

(h) The Matter of Secrecy.

General Principles.

Secrecy is not fraud, nor standing alone is it an evidence of fraud. In addition to the secrecy itself, some injury must have resulted therefrom to one entitled to know. The truth is that secrecy is innocent and even praiseworthy far oftener than it is connected with fraud. The communications between husband and wife are secret, and so praiseworthy is this secrecy that no court will allow it to be invaded. The communications of a client to his legal adviser are likewise inviolable. The relations between bankers and their customers are treated as confidential matters. Trade secrets are of such character that courts will even enjoin one possessing them through confidential relations, from revealing them. The deliberations of the members of a court are secret and the results reached are kept secret until the time when the court publishes them at large. One engaged in commerce refrains from inform

ing his rivals of his future plans. The revelations to church officials in matters of conscience or relating to religious discipline are inviolable. The list might be very greatly extended.

It is difficult to see how the issue of secrecy can have any bearing upon this case unless such secrecy was availed of as a method for procuring the lease upon an inadequate consideration. Yet, in the case at bar, as both courts have held, the lease was advantageous to the Government—the consideration adequate. As the testimony shows, the lease was more favorable to the Government than other oil men were willing to make (*supra*, p. 34).

Who Caused the Secrecy?

The record shows that there was a policy of secrecy as to naval petroleum matters to the extent that publicity was not given to such matters but that policy was instituted long before there was any thought of leasing Naval Reserve No. 3 and it was instituted, not by Secretary Fall, but by the Navy Department (R. 623), no officer of which is charged with corruption or fraud.

The war plans of the Navy were secret (R. 425-579). The question of secrecy as to naval petroleum reserve matters arose first as to the Pearl Harbor project in October, 1921, and an agreement was then made between Admiral Robison and Secretary Fall, *at Robison's instance*, that information should not be given out until the matter was entirely completed (R. 619 and 623). In Acting Secretary Roosevelt's letter of December 9, 1921, transmitting plans for the Pearl Harbor project, he stated, "In view of the

fact that this project is embodied in the war plans of the Navy, it is requested that all matters in connection therewith be regarded in as confidential a manner as possible" (R. 700). That letter was the first intimation either Assistant Secretary Finney or Dr. Bain had as to secrecy (Finney, R. 303; Bain, R. 700). Neither did Ambrose receive any instructions from Secretary Fall as to secrecy. He treated the matter as confidential "because all naval matters were generally secret" (R. 341).

As Dr. Bain testified, the injunction of secrecy which originated in the Navy Department, "was carried over into our later discussions of any leasing of the naval reserves" (R. 700).

The Evidence as to Secrecy.

The averment of the bill as to secrecy is that:

> "Said *Albert B. Fall* did fraudulently and covinously cause all information concerning the making of the said agreement, both before it was made and for a considerable time after it was made, to be kept secret and concealed from his associates, from the Congress of the United States, and from the public" (Italics supplied), (R. 10).

As we have just seen, the secrecy emanated, not from Secretary Fall, but from officers of the Navy Department against whom no complaint is made.

As to Secretary Fall's "associates" the averment falls of its own weight. Besides Secretary Denby and Admiral Robison of the Navy Department, the following officers or employees of the Interior Department—none of whom is

charged with corruption or fraud—had a part in the making of the lease: Bain (R. 671; 674), Ambrose (R. 336-41), Eddy (R. 339), Lane (R. 340), and Hill (R. 340); and Assistant Secretary Finney knew from the first that a lease was being drafted (R. 284).

As to "the Congress of the United States", on April 12, 1922, the day on which Secretary Denby signed the lease, Secretary Fall wrote Senator LaFollette in reference to the features of the lease (R. 728-32).

As to "the public," Secretary Fall told Crawford that Naval Reserve No. 3 was to be developed but was not going to be offered publicly because bids were not desired from people who could not handle a project of such magnitude (R. 402). He told Darden (R. 401), Shaffer (R. 365), Helms (R. 383), Hughes (R. 712), and Beaty (R. 348) of his negotiations with Mr. Sinclair.

Mr. Beaty testified that *it was pretty well known to the oil companies that were in a position to handle a deal of that magnitude that a lease was under consideration. He saw no indications of secrecy* at his meeting with Secretary Fall and there was no intimation made to him that the talk he had with Secretary Fall was confidential or that he was not to divulge anything in relation to the subject (R. 355). Hughes testified that there was no suggestion or intimation to him by Secretary Fall of secrecy (R. 714).

Secretary Fall, prior to April 6, 1922 (when the Teapot Dome lease was in final form for execution), declined in two instances only to give information to those that sought it: First, to Kistler, who submitted a proposition that could not be accepted (*supra*, p. 140), and second to one Joseph

W. Clark who made a vague inquiry as to the possibility of leases on the Naval Petroleum Reserves and whom the Government did not in any way show to be a "responsible" bidder (R. 409-12).

Additional evidence upon the question of secrecy, chronologically stated, is as follows:

On April 6, 1922, the Interior Department gave out a memorandum for the press in reference to a Denver, Colorado, dispatch published in a New York newspaper, relating to a rumor that Teapot Dome had been leased. The memorandum stated that a policy had been determined upon but no definite contracts had yet been made (R. 389-90).

On April 7, 1922, Senator Kendrick of Wyoming received a telegram from one of his constituents, Leslie Miller, who desired a lease on a small tract of Teapot Dome. Senator Kendrick sent his Secretary, W. A. Anderson, to the Interior Department for information in reference to the matter (R. 387-8). Anderson saw Finney who referred him to Secretary Fall. Secretary Fall was not available but his secretary, Mr. Safford, stated to Anderson that no lease had been signed. Anderson asked that Senator Kendrick be kept informed (R. 393). On April 10 Dr. Bain at Secretary Fall's request, sent Senator Kendrick a copy of the memorandum given out under date of April 6 (R. 389).

The contract was signed by Secretary Denby on April 12. On that date Fall sent Denby a copy of a memorandum which he had made for the government of his staff in the Interior Department not to give out any information as to the *details* of any plans (R. 287, 290).

Under date of April 12, 1922, Secretary Fall sent to Senator La Follette a memorandum of the principal features of the Teapot Dome lease pursuant to a request made by Senator La Follette upon the State Department for copies of various orders dealing with naval petroleum reserves (R. 728-32).

Secretary Fall was leaving Washington for the west on the evening of April 13. Before leaving he told Finney and Bain that the lease had been executed but that he did not want to let the contract get out until after the Pearl Harbor contract was also made (Finney R. 286-7; Bain R. 690).

Before leaving on April 13, Secretary Fall wrote to President Harding in reference to the information he had given Senator La Follette (R. 734).

On April 14, 1922, one Peter Q. Nyce wired Finney asking if Teapot Dome had been opened for development and if so, with whom. Finney replied that it had been but that he was not in a position to give out details in the absence of Secretary Fall (R. 418).

On April 13, Senator Kendrick introduced in the Senate a bill providing that royalties from Naval Reserve No. 3 should accrue to the State of Wyoming (R. 391).

On April 15, 1922, Senator Kendrick introduced a resolution calling upon the Secretary of the Navy and the Secretary of the Interior for information as to whether a lease was being negotiated of Naval Reserve No. 3 (R. 391-2). This resolution was adopted as Senate Resolution No. 277.

Under date of March 24, 1922, Admiral Robison wrote Congressman P. H. Kelly pursuant to the latter's request for information relative to the operation of the naval reserves. In this letter he told of the general policy that had been pursued in respect of the reserves but did not give information concerning what was being done as to Naval Reserve No. 3 (R. 415-17).

On April 6, 1922, the Inland Oil Index, a newspaper of Casper, Wyoming, wired the Secretary of the Navy to confirm or deny the report that Teapot Dome lease had been made with Sinclair. The Navy Department replied on April 7 that it had made no contract (R. 417-18). Admiral Robison testified that he sent the reply wire to the Inland Oil Index, that his wire contained the truth in that Secretary Denby had not then signed the lease and that he did not tell the newspaper more because he did not think it or any other newspaper necessarily had any right to knowledge as to what was being done in the department (R. 620).

Under date of April 17, 1922, Congressman Sinnott wrote Admiral Robison asking, among other things about the naval reserves, how much of Teapot Dome had been leased to Sinclair (R. 419). Robison replied that the information could be obtained at the Interior Department.

Sinnott's letter, however, led Admiral Robison to take up with the Interior Department the matter of making a public announcement of the lease. He discussed the matter with Secretary Denby and Judge Finney (Secretary Fall then being absent) and it was decided to make such a public announcement (R. 621).

On April 18, 1922, a memorandum for the press was given out by the Interior Department announcing the lease

with the Mammoth Oil Company (R. 375-77). The Navy Department also prepared immediately to make mimeographed copies of the lease to be distributed to whomsoever requested them (R. 621).

Congressman Frank W. Mondell received a telegram on April 16, 1922, from the Rocky Mountain Oil & Gas Producers Association protesting against a lease of Naval Reserve No. 3 as detrimental to the interests of the oil producers of Wyoming. He went to see Admiral Robison and read the Navy's copy of the contract (R. 622) and shortly thereafter received copies of it (R. 295). Mondell discussed the contract with Admiral Robison and was impressed with his familiarity with it (R. 295).

At the time the lease was being negotiated the Limitation of Armaments Conference was sitting in Washington (R. 431). Admiral Robison felt there was no necessity of going to Congress for authority which he was advised and thought had already been conferred upon the Secretary of the Navy by Congress and he considered that taking the matter up with Congress for express approval would have resulted in "long discussion and much publicity which, at the time, I think would have been unfortunate in an international sense" (R. 652).

The Evidence of Secrecy Falls Short.

Whether the motives of the Navy Department for such secrecy as was practiced were sufficient to justify it or not, there is nothing in the evidence that affects Mr. Sinclair or the Mammoth Oil Company, or the contracts sought to be cancelled. There was no testimony in the secrecy as detailed

to cause the Government to obtain less favorable contracts than would have been obtained without the secrecy and in fact as we have seen, the contracts were unusually favorable to the Government.

Why should Mr. Sinclair or the Mammoth Oil Company be held guilty of fraud because of secrecy with which they had no connection? There is no hint in the record that Mr. Sinclair or the Mammoth Oil Company knew of the secrecy or in any way participated in any effort or even in any desire to keep knowledge of the facts either from Congress or from the general public. Not only is there an absence of evidence that Mr. Sinclair or the Mammoth Oil Company had notice of concealment but there is also absence of any charge of such notice in the bill, as will be seen from the language of the bill hereinbefore quoted (*supra*, p. 146).

We submit that no officer of the Government is shown to have been remiss in any matter evidenced by the secrecy claimed, but it would not be enough that such officer were shown remiss in order to cancel the contracts here. It would be necessary to show in addition that the Mammoth Oil Company or Mr. Sinclair who represented it participated in it or at least knew of the dereliction. This is the rule in actions to set aside conveyances with intent to defraud creditors. *Prewitt* v. *Wilson*, 103 U. S. 22, 24; *Jones* v. *Simpson*, 116 U. S. 609, 615; *Cohan* v. *Levy*, 221 Mass. 336; *In re Locust Building Co., Inc.* (C. C. A. 2), 299 Fed. 756.

It is likewise true in cases where an agent with apparent authority disposes of his principal's property, the agent being guilty of fraud in the matter against his principal but without notice to or participation therein by the purchaser.

Andrews et al. v. *Solomon et al.* 1st Fed. Cases 889 (Case No. 378, Opinion by Mr. Justice Washington); *Paxton* v. *Marshall*, 18 Fed. 361, *Brooks* v. *Dick, et al.*, 135 N. Y. 652; *Mason Executor, et al.* v. *Bauman*, 62 Ill. 76; *Pacific Express Co.* v. *Carroll Co. Bank*, 66 Mo. Appeals 275; *Chetwood* v. *Berriman*, 29 N. J. Equity 203; *Myers* v. *Mutual Life Ins. Co.*, 99 N. Y. 1. These authorities make it clear that secrecy and concealment by an agent manifested in his conduct toward his principal, even if a fraud on the principal, will not charge a third person dealing with the agent unless notice thereof be brought home to such third person.

(j) The Exchange by Sinclair of a Portion of the Mammoth Oil Company Stock for Sinclair Consolidated Oil Corporation Stock.

The Court of Appeals apparently treats as significant without directly stating how, the exchange by Sinclair with Sinclair Consolidated Oil Corporation of one-fourth of the stock of the Mammoth Oil Company for stock of that corporation, designated by that court as "property of the value of more than $8,000,000". In the same connection the Court of Appeals speaks of the assets of the Mammoth Oil Company in these words: "this lease being the only asset of said Company" (R. 828).

In its observations and findings as to the exchange of Mammoth stock for Consolidated stock by Sinclair the Court of Appeals ignores all questions of the time when these things were done and of what had happened meanwhile. The lease, it will be remembered, is dated April 7th and was executed finally on April 12th, 1922.

Mr. Sinclair's proposition to make this exchange was made in September between five and six months subsequent to the granting of the lease (R. 552-553). Included in Mr. Sinclair's proposition is his statement that he will place $3,000,000 cash in the treasury of the Mammoth Oil Company (R. 553).

The Sinclair Consolidated Oil Corporation, because of the relation between it and Mr. Sinclair, was unusually careful to consider the proposition and caused investigations to be made in order to ascertain the value *at the time of this exchange* of the property of Mammoth Oil Company. All of this is shown by a report of a Committee of Sinclair Consolidated Oil Corporation (R. 553-559). The report of this Committee is not dated, but at the end of the report it shows a date—September 28, 1922—and the Committee also presented a legal opinion concerning the transaction by Cravath, Henderson, Leffingwell & DeGiersdorff dated September 29, 1922 (R. 559-565).

In the report of the Committee are several significant facts. It is shown that Mr. W. A. Kunkel "a well known expert", was employed to investigate the properties; that Mr. Kunkel and Dr. Veatch, the corporation's geologist, visited the properties in making the investigation, and that Mr. Kunkel appeared before the Committee and was examined at some length, and that he was very certain of the conclusions that he reached (R. 554). The report by Mr. Kunkel as made to the Committee is not in evidence. Some matters contained in it, however, are in the report of the Committee. Among other things his report showed that he had been familiar with Teapot Dome for several years and

that his "previous convictions" as to the presence of oil in Teapot Dome "have, during the past six months *been confirmed* by the bringing in of wells drilled just off the narrow edge of the Dome toward the Salt Creek Field. He regards the existence of oil as established to the satisfaction of an oil expert and his certainty of the existence of oil is such that he would act on it as demonstrated if the decision rested entirely with him" (R. 555, lines 15-21).

In other words at the time of this exchange of Mammoth stock for Sinclair stock by Mr. Sinclair the *hope* that existed at the time of the making of the lease that oil might be found in paying quantities in Teapot Dome had been made practically certain by wells in the land immediately adjacent. It is true that oil operators will lease lands upon the hope that oil may be found, and will expend large amounts of money in drilling to ascertain whether their hope shall be realized. But it is distinctly not true that the value of a lease upon such lands is the same at the time when the lease is granted under the *hope* as it is when the presence of oil has been demonstrated. Upon this question this Court in the case of *Twin-Lick Oil Company* v. *Marbury*, 91 U. S. 587, at page 592, uses the following language:

> "The fluctuating character and value of this class of property is remarkably illustrated in the history of the production of mineral oil from wells. Property worth thousands today is worth nothing tomorrow; and that which would today sell for $1000 as its fair value, may, by the natural changes of a week or the energy and courage of desperate enterprise, in the same time be made to yield that much every day."

In the case of *Patterson* v. *Hewitt*, 195 U. S. 309, at page 321, this Court says:

> "There is no class of property more subject to sudden and violent fluctuations of value than mining lands. A location which today may have no salable value may in a month become worth its millions. Years may be spent in working such property, apparently to no purpose, when suddenly a mass of rich ore may be discovered, from which an immense fortune is realized."

In this case the Court of Appeals gave no weight whatever to the discoveries just off the edge of the land in controversy which made certain the existence of oil in the Teapot Dome. Nor did it take any notice of the expenditures that had been made by Mr. Sinclair, or of the cash that he was placing in the treasury.

The evidence, then, of this exchange by Mr. Sinclair has no tendency to conflict with the direct and positive evidence of Mr. George K. Thomas, Mr. John McFayden, Mr. Gerald Hughes, Dr. Bain, Admiral Robison, and the offer by the Texas Company, which it must be presumed was thought fair by that company. All of these show that the lease *at the time it was made was at least* fair to the Government.

(k) The $25,000 Loan by Sinclair to Fall in June, 1923.

The facts of this transaction in respect of which no charge was made in the bill of complaint, although known to the Government, because stated to the Senate Committee on Public Lands and Surveys (R. 568) are as follows:

Fall ceased to be Secretary of the Interior on March 4th, 1923 (R. 4).

In May, 1923, Mr. J. W. Zevely, went to see Secretary Fall in Three Rivers, New Mexico and asked him to go to Russia with Mr. Sinclair as counsel in regard to certain controversies in connection with applications for oil leases in that country (R. 568). Mr. Fall stated that he could probably go but not as soon as Mr. Sinclair wanted him to go, that he would follow later but that he would need some money, that he had some things to do down at home before he could go, one or two small ranches he wanted to buy there and would need $25,000. He also told Mr. Zevely that before he could go he would have to go to Washington to see if the Administration approved his going on such a mission since he had been connected with the Administration. Secretary Fall subsequently went to Washington (R. 549) and before Mr. Sinclair sailed for Europe—May 26th, 1923—(R. 551) Mr. Zevely told Mr. Sinclair that Secretary Fall might want $25,000; that at that time Mr. Sinclair told his private secretary, G. D. Wahlberg in Mr. Zevely's presence, that Mr. Zevely might want $25,000 and if he did, to give him Liberty Bonds for that amount. Within a week or ten days thereafter Mr. Zevely requested the bonds (R. 551). On June 5, 1923, Mr. Zevely wrote James C. McNary, President of the First National Bank of El Paso, Texas, that he was sending by express a package which was the property of Secretary Fall and was to be received for his account (R. 549-50). Secretary Fall wrote Mr. McNary stating that he was having forwarded from New York $25,000 in United States Bonds and giving

directions as to them (R. 549). On June 12, 1923, Mr. McNary wrote Mr. Zevely acknowledging receipt of the letter of June 5th and stating that the package had been received (R. 550). On June 11, 1923, the bonds were credited to the account of Secretary Fall in the First National Bank (R. 549).

We submit this transaction, occurring as it did several months after Fall had gone out of office and over a year after both the execution of the lease and the inferred bribery in connection therewith, can not be treated as a matter upon which to base the inference of bribery.

Upon no theory of law can the transaction have the slightest relevancy to the charge of bribery made in the Government's brief below or to any issue raised by the bill. However, the Court of Appeals says:

> "The transaction tends to show that the dealing in bonds between Sinclair and Secretary Fall was not a novel affair, unusual as it might be in the business world, and reveals an intimate relationship between Secretary Fall and Sinclair. * * * It relates back and tends to taint the contract, perhaps not in itself sufficiently to invalidate it, but is to be considered as a weighty circumstance bearing on the good faith of the matter" (R. 840).

The record facts stated above clearly support the finding of the District Court that the transaction was done openly without any attempt to conceal it and was fully and legitimately explained (R. 262-3).

The Court of Appeals states:

> "Secretary Fall suggested to Zevely, who appears to have been managing the matter, that he de-

> sired the approval of the administration as to this enterprise. It is not disclosed that the same was ever sought. Assuredly it was not forthcoming" (R. 839).

With evidence in the record that Fall said he would seek the Administration's approval, that he was in Washington subsequent to his conversation with Mr. Zevely and before he went abroad, and that he did go abroad, is it not a more reasonable inference that he did seek the administration's approval and that such approval was given?

We quote further as to what the Court of Appeals says of the $25,000 of Bonds:

> "There is no identification of these bonds as being bonds ever owned by the Continental Trading Company, Ltd., although they are three and one-half per cent Liberty Bonds, and in that respect bear similarity to the bonds received by Everhart about a year before these were taken from Sinclair's box" (R. 839).

This seems indeed a trivial circumstance from which to draw an inference that Mr. Sinclair bribed Secretary Fall.

In *United States* v. *Hancock*, 133 U. S. 193, 196, this Court referring to a gift of a part of the property involved made to a former Government officer after he had ceased to hold office, by a party with whom he had dealt officially while in office concerning the same property—a transaction surely more open to suspicion than a loan, such as was the $25,000 transaction in the case at bar—said:

"It is true there is testimony furnished by Mr. Hopkins himself that some time after the patent had been issued he accepted a deed of a portion of this grant as a present from the owners—a tract which he subsequently sold for $1,500. Whatever criticism may be placed upon the acceptance of this gift—a gift made long after his relations to the survey had ceased—it certainly does not establish dereliction in his discharge of prior official duty."

Conclusions as to the Charge of Bribery.

We have now reviewed all of the matters designated by the Court of Appeals as "condemnatory incidents" and the inferences therefrom which that court says "supply the so-called missing links in the testimony and satisfy us of Sinclair's connection with the Continental Trading Company, Ltd., and with the acquisition of the government Liberty Bonds by Everhart and Secretary Fall" (*supra*, p. 104).

We submit, not merely that there are "missing links", but, indeed, that there are no links to make up a chain of proof that Mr. Sinclair was connected with the Continental Trading Company or with the Liberty Bonds claimed to have been in the possession of Everhart; that no incident in relation either to Mr. Sinclair's business transaction with the Continental Trading Company, Ltd., or to any act or thing done by him in the matter of negotiating the lease and contracts in issue, may fairly be characterized as "condemnatory".

Was there anything inconsistent with honesty and integrity: in Mr. Sinclair's acting for Sinclair Crude Oil Purchasing Company in the joint purchase by that com-

pany and Prairie Oil & Gas Company of oil from the Continental Trading Company, Ltd.; with his inquiry of Secretary Fall on December 31, 1921, as to whether Teapot Dome would be leased; with his willingness to clear Naval Petroleum Reserve No. 3 of outstanding claims in order that the Secretary of the Navy might make a lease free from controversy and insure to the Navy a share in all the oil taken from the reserve; with his willingness and offer to allot a portion of the lands to Shaffer; with his offer to meet the requirements of the Navy in connection with a lease; and finally with his obtaining a lease shown to be wholly advantageous to the United States and held by both the District Court and the Court of Appeals to be authorized by law and to have been made by Secretary Denby in compliance with law?

If there be aught to criticize in the promulgation of the Executive Order, or in connection with the Navy's policy of secrecy, or in the Navy's determination of the question of drainage and decision to lease the reserve, or in Secretary Fall's acting for the Secretary of the Navy, together with Admiral Robison, in the negotiation of the lease, or in Secretary Fall's action in the matter of the quieting of claims on the reserve, or in any other act of any government official in connection with the making of the lease—and we submit there is not—the fact would still remain that neither Mr. Sinclair nor the Mammoth Oil Company was responsible for any of such matters. How, therefore, can they be "condemnatory" of Mr. Sinclair or of the Mammoth Oil Company?

We repeat that the Court of Appeals drew unreasonable and illegitimate inferences from these various mat-

ters (thereby committing error of law) and used such inferences as further bases from which to draw the inferences, first, that Mr. Sinclair received Liberty Bonds from the Continental Trading Company, Ltd., and second, that he delivered Liberty Bonds to Everhart or Secretary Fall, thereby again committing error of law.

An inference may no more be legitimately drawn from a myriad of other inferences than from a single other inference.

Upon the issue of fraud, we therefore respectfully submit that the decision of the Court of Appeals should be reversed.

The Legality of the Lease and Contracts.

This Court in the case of *Pan American Petroleum & Transport Company et al.* v. *United States*, No. 305 October Term, 1926, decided February 28, 1927, considered certain features of the Act of June 4, 1920. Of course the facts in that case must be looked into in any attempt to give a just interpretation of the decision.

This Court finds in that case, as was also in effect found by both lower courts, that the companies contracting there with the United States

> "sought and corruptly obtained Fall's dominating influence in furtherance of the ventures. It is clear that at the instance of Doheny, Fall so favored the making of the contracts and leases that it was impossible for him loyally or faithfully to serve the interests of the United States."

The Court in its opinion states the initial contract there involved as follows:

> "The Transport Company agreed to furnish at the Naval Station at Pearl Harbor, Hawaii, 1,500,000 barrels of fuel oil and deliver it into storage facilities there to be constructed by the company according to specifications of the Navy. The Company was to receive its compensation in crude oil to be taken from the Reserves. The quantity, on the basis of the posted field prices of crude oil prevailing during the life of the contract, was to be the equivalent of the market value of the fuel oil and also sufficient to cover the cost of the storage facilities. The United States agreed to deliver to the company at the place of production month by month all the royalty oil furnished by lessees in Reserves Nos. 1 and 2 until all claims under the contract were satisfied. It was stipulated that if production of crude oil should decrease so as unduly to prolong performance, 'then the Government will, in the discretion of the Secretary of the Interior, grant additional leases on such lands as he may designate in naval petroleum reserve No. 1 as shall be sufficient to maintain total deliveries of royalty oil under this contract at the approximate rate of five hundred thousand barrels (500,000) per annum'. And, by Article XI of the contract, it was agreed that, if during the life of the contract such additional leases should be granted within specified areas, 'the contractor shall first be called upon by the Secretary of the Interior to meet such drilling conditions and to pay such royalties as the Secretary may deem just and proper, and in the event of his acceptance * * * the contractor shall be granted by the Government a preferential lease on

> such tracts as the Secretary of the Interior may decide to lease. In the event of the failure of the contractor to agree * * * then said lease or leases may be offered for competitive bidding, but the contractor shall have a right to submit a bid on equal terms with others engaged in said bidding.' "

Three other contracts were involved in the *Pan American case*: first, a lease dated June 5, 1922, made pursuant to provisions contained in the initial contract of April 25, 1922 and made in aid of said initial contract; second, a contract dated December 11, 1922, providing for the construction and filling of additional storage facilities at Pearl Harbor and elsewhere and for the leasing to the Pan American Company of all unleased lands in Reserve No. 1 in aid of said contract and of the initial contract dated April 25, 1922; third, a lease dated December 11, 1922, made pursuant to the contract of that date and made in aid of said contract and of the initial contract of April 25, 1922.

Other matters tending against the contracts there involved are mentioned in the opinion of the Court but need not concern us further here. Suffice it to say that this Court as to any purpose of those contracts to protect the United States against loss of petroleum by drainage says:

> "It is certain that the contracts and leases have no such purpose"

and at another place the Court says:

> "The danger of drainage had been eliminated by agreement between the United States and oil companies operating in the vicinity, etc."

In that case on the facts this Court was not called upon to give any opinion as to a lease of Naval Petroleum Reserves made to prevent loss of petroleum to the United States through drainage and did not attempt to give any direct opinion upon any such case. Indirectly it had something to say in the matter and used this language:—

> "The possibility of loss by drainage might be a reason for legislation enabling the Secretary to take any appropriate action that at any time might become necessary to save the petroleum."

This of course is indirect and could not have been otherwise because no purpose of such protection was involved in that case.

Did the Act of June 4, 1920, Authorize the Lease and Contracts Here?

Clarity of discussion requires that the above question be discussed separately as to each contract here involved:

1. The lease proper, contained in an instrument dated April 7, 1922, viz: the agreement by which the Government leases to the Mammoth Oil Company the described lands upon the consideration that the Mammoth shall drill the lands as specified and pay the Government as royalties stipulated shares of the oil produced from the lands.

2. An agreement contained within the same instrument containing the lease, by which the lessee disposes of the royalty oils to the lessee at prices automatically fixed at the time such oil is produced by certain posted market prices. The lessee has four

options as to the equivalents to be received by it for the royalty oils: (1) It may take cash; (2) It may exchange for fuel oil; (3) It may exchange for other oil products suitable for naval use; (4) It may exchange such quantities of the royalty oils for storage facilities as are necessary to conserve such fuel oil as it might elect to receive in exchange, pursuant to the second option hereinabove enumerated.

(NOTE: The exchange of royalty oils for fuel oils was to be on a quantitative basis without reference to prices.)

3. A supplemental agreement dated February 9, 1923, made pursuant to the exercise by the lessor, the Government, of the options reserved to it to exchange the royalty oils for fuel oil and other oil products suitable for naval use, together with storage facilities required to conserve such fuel oil and other products.

Some matters have been suggested in this brief arising from the record that must be borne in mind in considering the question of legality as to each of these agreements. The record shows that all oil lands in what is called the "Salt Creek Field" which is separated from Naval Reserve No. 3 only by an imaginary line, had been leased prior to and on June 15, 1921, the amount leased on June 15, 1921 covering sixty-four hundred acres and completing the leasing of said Salt Creek Field (*supra*, p. 21); that the leases above mentioned required diligent drilling by the lessees thereunder (R. 299; 311); that in early September, 1921 Dr. H. Foster Bain, Director of the Bureau of Mines, and Mr. Arthur W. Ambrose, Chief Petroleum Technologist of that bureau, had been advised at Denver by Mr. Carroll

H. Wegemann (the father of Teapot Dome so far as laying it out and fixing its boundaries were concerned) and by Fisher & Lowrie, Petroleum Engineers, who had then recently examined the field, of certain geological facts which they had discovered and which, coupled with the leases of June 15, 1921, would lead to drainage of Naval Reserve No. 3 (*supra*, pp. 21-4); that in late September and early October, 1921, Wegemann was in Washington and submitted to the Navy and Interior Departments a written report in which he not only outlined the drainage that would be caused in Reserve No. 3 by the leases of the Salt Creek Field, but also pointed out the danger of losing oil to the Government by reason of movements of oil and water in the beds of the reserve itself that would be caused by the operations in the Salt Creek Field, and further pointed out that "there is no doubt that from the point of development of the property and recovery of oil from it, it will be much better to develop the property as a unit before the invasion of the water. The Navy Department cannot prevent draining the property as outlined above. It can make arrangements for the proper development of the property under conditions which will be mutually advantageous to the Navy Department and the operators" (R. 323); that as demonstrated in various typical oil fields it is impossible to prevent drainage when others have drilled or are about to drill into an oil pool (*supra*, p. 26); that very large amounts of oil had been lost from Naval Petroleum Reserve No. 2 in California from inability of the Government to make leases thereon prior to the passage of the Act of February 25, 1920, and from both California reserves through the de-

lay in drilling wells therein after February 25, 1920, but prior to March 1, 1921 (*supra*, p. 26); that in the opinion of the Bureau of Mines if wells on lands adjoining Reserve No. 3 in what is called the Salt Creek Field should reach the pool first, they would inevitably take from the Government—cause the Government to lose—large and indefinite quantities of its oil (*supra*, p. 27); that such wells reaching the pool prior to the time when wells on the reserve itself might reach the pool, would, not only initially, but probably continuously for an indefinite time, draw more than their share of oil—draw part of the Government's share of the oil even after the wells on the reserve might reach the pool; that it takes time to assemble material and drill wells to the point of reaching the oil.

> (NOTE: In the case at bar although the lease was agreed upon by April 7th and the last signature attached April 12th, 1922, and although the lease requires diligent drilling, no well under the lease had reached the oil in the reserve on September 28th, 1922 (R. 555). Admiral Robison states in his testimony that it would require about nine months from the time of beginning operations on the reserve to furnish oil at the seaboard.)

The inexorable laws of physics of which this Court has judicial notice, would of themselves make it certain that oil cannot be preserved in a pool such as Naval Reserve No. 3 when wells have reached that pool on other lands adjacent to the reserve. Oil is usually under great pressure, hydrostatic from below and gaseous from above, and such was the fact in respect of Naval Reserve No. 3 as Wegemann's report shows. In such a situation oil is a fugitive thing, seeking every avenue of escape and promptly moving in the direction of any well opened into the pool containing it.

These are the facts briefly reviewed but hereinbefore more fully stated which were before the Secretary of the Navy and under which he was called upon to exercise his discretion.

Of course, Congress knew that a situation similar to that above described and which is proven by the evidence to have existed here, might, indeed probably would, arise.

In *Chesapeake & Potomac Telephone Co.* v. *Manning*, 186 U. S. 238, 245, this Court said:

> "It is well settled that the courts always presume that the legislature acts advisedly and with full knowledge of the situation."

So, at the same session of Congress and but a few months after passing the Act of February 25, 1920, Congress passed the Act of June 4th, providing that

> "the Secretary of the Navy is directed to take possession of * * * the Naval Petroleum Reserves * * * to conserve, develop, use and operate the same in his discretion, directly or by contract, lease or otherwise and to use, store, exchange or sell the oil and gas products thereof * * * for the benefit of the United States" (R. 4-5).

(1) *The Lease Contained in the Instrument of April 7, 1922.*

The District Court, in stating the purpose, policy and authority granted by the Act of June 4th, uses this language:

> "Lying adjacent to the great Salt Creek Field where the leases were being granted by the hundred, or about to be, Congress realized, judging by the text of the Act of June 4th, that there was danger on account of this intense leasing, of drainage and a loss in the naval reserves themselves, and in consequence passed the act as a remedial measure for the purpose of taking the oil out if found necessary to save it" (R. 269).

With this in mind and applying to the statute the evidence as to the insecurity of the oil in the Reserve, the District Court held that the lease in controversy was authorized by the statute. This is a finding on a question of fact. In like manner the Court of Appeals construed the statute as follows:

> "Certainly, if the oil can be properly conserved in the ground the Secretary of the Navy is not under compulsion to develop the properties. What he does must be for the benefit of the United States. That is the limitation of his discretion. If he shall determine that the oil cannot be properly conserved within the ground, then he has the right to develop, use and operate the properties directly or by contract, lease or otherwise" (R. 812).

The Court of Appeals in applying the evidence to the statute so construed makes this finding:

> "We content ourselves with saying that on this branch of the case, as at present advised, we are in accord with the conclusion reached by the trial Court, that the authority granted by the Act of June 4, 1920, is sufficient to authorize the lease and contract in question" (R. 816).

The result is that with the statute construed as this Court apparently, though indirectly, construes it, both Courts below found that the facts brought the lease within the statute as so construed.

Any careful survey of the evidence, we submit, will show that this concurrent finding is in accordance with the evidence in the case, and certainly will disclose that the finding is not "clearly" against the weight of the evidence. *Charleston, South Carolina, Mining & Manufacturing Co.* v *United States*, No. 93, October Term, 1926, decided by this Court February 21, 1927.

(2) *The Collateral Agreement Disposing of the Royalty Oils, Contained in the Instrument of April 7, 1922.*

The Act of June 4th grants authority to the Secretary of the Navy to "use, store, exchange or sell" the oil and gas products from the Naval Reserves.

As we have hereinbefore shown, in the same instrument containing the lease of Naval Reserve No. 3, there is a further agreement by which the lessor disposes of the royalty oils accruing to it under said lease to the lessee. Under such agreement the lessee issues to the lessor certificates showing the amount and value (determined by reference to specified market prices at the time the oil is produced) of said royalty oils. Said certificates are redeemable by the lessee and may be used by the lessor (the lessor having the entire decision in the matter) in the following ways:

> First: The lessor may take cash for each certificate in the amount stated therein as the value of the oil represented by such certificate.

> **Second:** The lessor may receive fuel oil for the royalty oil represented by such certificate, the exchange being on a quantitative basis at specified ratios.
>
> **Third:** The lessor may receive other oil products (*i. e.*, in addition to fuel oil) suitable for use by the Navy.
>
> **Fourth:** The lessor may in connection with its right to use certificates in exchange for fuel oil, use additional certificates, but only such amount as is necessary for the purpose, to exchange for storage tanks required to conserve the fuel oil it elects to receive.

The first three of the four above mentioned options are in the alternative. The fourth is a supplement to, and is limited by, the option to receive fuel oil.

We take it that there can be no question as to the legality of the first option mentioned, namely, to have the certificates redeemed in cash which would by operation of law go into the treasury of the United States and which therefore, would be subject to appropriation by Congress for the use of the Navy or otherwise.

Likewise, we take it from the opinion of this Court in the *Pan American* case, that the option to exchange the royalty oils for fuel oil and other oil products suitable for use by the Navy must be held entirely legal. In that connection it should be remembered that the Naval Petroleum Reserves were created for and dedicated to the "exclusive use or benefit of the United States Navy" (*supra*, p. 15). The lease here was made to prevent loss to the Navy of the oil in Naval Reserve No. 3—to conserve the oil for the

Navy. But the oil in its crude state as produced from the lands was not usable as fuel oil for the Navy's ships (R. 593-4), so that conservation of such oil for reserve purposes resolved itself into conservation of equivalents of such oil in oil products suitable for Naval use as fuel and lubricants.

The matter was stated by this Court in the *Pan American* case as follows:

> "The circumstances of the enactment as well as the terms of the provisions indicate a purpose to authorize exchange of crude petroleum from these reserves for fuel oil and other petroleum products suitable for use by the Navy. The Secretary was not authorized to refine the crude products. A draft of the Act included that authority, but the word 'refine' was stricken out. This made necessary the exchange of the crude product for fuel oil and other products suitable for use."

This brings us to the question of the legality of the option to use some of the royalty oils in exchange for such storage tanks as might be required to conserve whatever fuel oil the Secretary of the Navy elected to receive in exchange for royalty oils.

In the *Pan American* case this Court said:

> "As the Secretary, among other things, was authorized until July 1, 1922, to use money out of the appropriation to 'store' oil and gas products from these lands, it will not be held, in the absence of language clearly requiring it, that he was also empowered *without limit* to use crude oil to pay for additional storage facilities." (Italics supplied.)

In the case at bar the Secretary of the Navy clearly did not attempt to use crude oil to pay for storage facilities "without limit". Here the option to exchange for storage was expressly limited by the contract itself to such as was required for the conservation of the fuel oil elected to be received. As we have hereinbefore shown, the language of the contract is:

> "The lessee agrees, if and when requested so to do by the lessor, to construct or to pay the cost of construction of steel storage tankage up to but not in excess of such an amount as shall be estimated to be necessary or required for the storage by the lessor of the fuel oil to be received by it as hereinbefore provided in exchange for royalty crude oil from the lands hereby leased; said storage to be constructed as and when the same shall become necessary or shall be required for the storage of such fuel oil so delivered by the lessee or its nominee, and said storage to be located at points designated by the lessor; the cost of such tankage to be liquidated by lessor by delivering to the lessee or its nominee crude oil certificates hereinbefore referred to, said certificates so delivered to be of the face amount in value equal to the cost of such tankage for which the lessee or its nominee shall have paid or become liable" (R. 26).

This seems to us entirely in harmony with the policy concerning the Naval Petroleum Reserves—to conserve the oil in the specified lands or rather its equivalent in oil products usable by the Navy as a *reserve* for the exclusive use or benefit of the Navy.

The Act of June 4th, 1920, seems to us remedial in character. It provides means to protect against loss of oil from the Naval Petroleum Reserves and to transform the oil threatened with loss into oil products stored in such a way as to be secure from any loss. The spirit of a statute is to be observed as well as the letter, and what is implied is as much a part of the statute as what is expressed.

Fleischmann Construction Co. v. *United States* to the use of Forsberg, 270 U. S. 349-360;
Stafford v. *Wallace*, 258 U. S. 495;
Ross v. *McIntyre*, 140 U. S. 453;
Telegraph Co. v. *Eyser*, 19 Wall (86 U. S.) 419.

Moreover the Act has in it the word "store" in relation to the oil produced from the lands. But, as we believe this Court has indicated, the conservation of the oil produced from the lands in practical effect means conservation of oil products received as equivalents of the crude oil. Crude oil being highly volatile may not be stored above ground without serious loss through evaporation but fuel oil may be stored for an indefinite period without appreciable loss (R. 378). How, in the exercise of wise discretion, can the Secretary of the Navy better conserve the oil in Naval Petroleum Reserve No. 3 which was threatened with loss, than by reserving to himself as he did in the contract of April 7th, the right to exchange the royalty crude oils which were not usable and which could not be stored, for fuel oil and other oil products which the Navy actually uses, stored in secure containers as a reserve.

We deem it not amiss in connection with our discussion of the option concerning storage to refer briefly to the $500,000 money appropriation contained in the Act of June 4th. That money appropriation was not by the statute made applicable solely to the construction of storage. The language of the Act is "for this purpose" meaning, we think, for the purposes of the Act generally. Included within the authority granted to the Secretary of the Navy were some matters which clearly would have required the expenditure of money by the Secretary had he elected to exercise such authority. But likewise clearly there were matters for which he did not require a money appropriation. He needed no money to lease and, having leased, he needed no money to exchange royalty oils for fuel oil and other oil products. Moreover the authority to lease and the authority to exchange were not limited as to time whereas the money appropriation (which was indeed a contingent appropriation in that it was of "such sums as have been or may be turned into the treasury of the United States from royalties on lands within the Naval Petroleum Reserves") expired by the terms of the Act on July 1, 1922. If the money appropriation did not limit the authority of the Secretary of the Navy to conserve the oil in Naval Petroleum Reserve No. 3 by leasing said reserve and did not limit his authority to exchange royalty oils accruing under the lease for fuel oil and other oil products, should it be construed to limit the authority to exchange for containers necessary to conserve the fuel oil and other products? May not the money appropriation be given proper effect without construing it as a limitation upon powers granted

to the Secretary in relation to which no money expenditure was required?

(3) *The Supplemental Agreement of February 9, 1923.*

As indicated by the date thereof the supplemental agreement was executed approximately ten months after the execution of the lease and collateral agreement contained in the instrument dated April 7th, 1922.

It was made pursuant to the exercise by the Government of the options contained in the collateral agreement in the instrument of April 7th to exchange royalty oils accruing to it from the leased lands for fuel oil and other oil products and the option supplemental thereto to exchange some of the royalty oils for storage facilities necessary to conserve such fuel oil and other oil products. At the time of its execution royalty oils were, and for some time had been, accruing to the Government and the agreement provided that the Mammoth Oil Company should forthwith construct at the Navy Yard at Portsmouth, New Hampshire, storage facilities for 42,000 tons of fuel oil and for specified quantities of other oil products and fill the tanks with the products for which they were designed. The agreement likewise provided for additional projects of tanks filled with fuel oil and other products to be undertaken one after another as, if and when royalty oils accrued to the Government sufficient to furnish by exchange the fuel oil and other oil products desired in respect of each project.

In no respect does the supplemental agreement of February 9th, 1923, overreach or depart from the purpose expressed in the contract of April 7th, 1922, to construct only

such storage facilities as are required to conserve the oil products which the Government in said supplemental agreement elected to receive in exchange for the royalty oils accruing from the lease.

It may be well to recall the situation as it existed when the supplemental agreement was entered into. The money appropriation contained in the Act of June 4th, 1920, had by efflux of time ceased to exist on July 1st, 1922, months before the execution of the supplemental agreement, but as we have hereinbefore pointed out the authority to lease and to exchange—in other words, the general authority given in the Act of June 4th—had not expired and indeed was without any limitation as to time. At the time of the execution of the supplemental agreement the Secretary of the Navy was and for some time had been actually receiving royalty oils and had a reasonable expectation of continuing to receive royalty oils for an indefinite time. What must he do with such royalty oils? As we have pointed out hereinbefore it was entirely within the purpose and policy of the orders creating the Naval Petroleum Reserves that the Secretary of the Navy reserved to himself in the contract of April 7th, 1922, the right to exchange the crude oils which he could not use and which he could not store for fuel oil and other oil products which he could use and which he could store; and the supplemental agreement was merely in the exercise of the right so reserved.

Neither the lease nor collateral agreement contained in the instrument dated April 7th, 1922, provides for any fuel depot or for any designated storage project or for the location of any storage. It merely provides that if the Gov-

ernment wherein to receive fuel oil for its royalty oils the lessee will construct such storage facilities as are required to conserve such fuel oil and the location of such storage is left entirely to the Government. As to the supplemental agreement of February 9th, 1922, there is no indication in the Record that any of the tankage either that already constructed at Portsmouth, New Hampshire or that which may be constructed at other places is in the least akin to the choosing or selecting or creating or constructing of a new fuel depot.

Discretion.

The statute uses some imperative language. The discretion to take possession of the reserves is a command. The next infinitives connected with the word "directed" are these: "to conserve, to develop, to use and to operate". These words are followed by the words "in his discretion".

There is no room to contend that the discretion is not fully left to the Secretary of the Navy. It is he that must find whether the Naval Reserve oils are secure in the ground or in danger of loss by drainage. The other things that follow in the statute "to use, store, exchange or sell products" do not impose any condition or restriction upon the discretion but are themselves an indication that the oil may be taken out of the reserves and also indicate additional matters left to the discretion of the Secretary of the Navy. It is he that must decide whether "to use, to store, to exchange or to sell" and the clause in between the two above discussed likewise shows matters submitted to the judgment and discretion of the Secretary. He is to decide

the method of developing the lands. No light or insignificant matters are thus committed to the discretion of the Secretary—very clearly and intentionally left to his discretion. In the case at bar the Secretary of the Navy in determining to lease Naval Reserve No. 3 acted upon evidence which seems to us to have been compelling and to have left no other reasonable decision than the one made. Having determined to lease the Reserve, the Secretary of the Navy reserved to himself the right to transform the royalty oils accruing to the Government from the lease into oil products usable by the Navy and capable of being conserved for reserve purposes and further in the exercise of such right made the supplemental agreement of February 9th, 1923, to effectuate the conservation of the equivalents of the Navy's oil in Naval Reserve No. 3 which had been threatened with loss.

In the absence of clear evidence to the contrary courts presume that public officers have properly discharged their official duties. *United States v. Chemical Foundation, No. 127, October Term, 1926*, decided by this Court October 11th, 1926.

Here the Government introduced no evidence of the facts developed by the drilling in Naval Reserve No. 3 to show that the Secretary of the Navy acted arbitrarily or capriciously in determining to lease the reserve because of threatened loss of oil. Furthermore there was no evidence that the Secretary of the Navy abused the discretion conferred on him by the Act of June 4th in any matter in relation to the disposition by him of the Government royalty oils or in relation to the methods chosen by him to conserve the equivalents to be received for said royalty oils.

Moreover, it is to be remembered that if judgment and discretion are vested by statute in an Executive Officer, the courts will refuse to substitute their judgment and discretion for that of the Executive Officer.

In *United States* v. *Speed*, 8 *Wall.* 77, 83 this Court said:

> "It is too well settled to admit of dispute at this day that where there is a discretion of this kind conferred on an officer, or board of officers, and a contract is made in which they have exercised that discretion, the validity of the contract can not be made to depend on the degree of wisdom or skill which may have accompanied its exercise."

That principle has been uniformly followed. In the late case of *Dakota Central Tel. Co.* v. *South Dakota*, 250 U. S. 163, 184, this Court said:

> "The proposition that the President, in exercising the power, exceeded the authority given him, is based upon two considerations: First, because there was nothing in the conditions at the time the power was exercised which justified the calling into play of the authority; indeed, the contention goes further and assails the motives which it is asserted induced the exercise of the power. But as the contention at best concerns not a want of power, but a mere excess or abuse of discretion in exerting a power given, it is clear that it involves considerations which are beyond the reach of judicial power. This must be since, as this court has often pointed out, the judicial may not invade the legislative or executive departments so as to correct alleged mistakes or wrongs arising from asserted abuse of discretion."

DeCambra v. *Rogers*, 189 U. S. 119;

State of Louisiana v. *McAdoo*, Secretary of the Treasury, 234 U. S. 627;
Silberschein v. *United States*, 266 U. S. 221.

Severability of the Contracts.

We contend that the contracts here in controversy were authorized throughout—were entirely legal, not only in their substance but in the manner of effecting them and in the preliminaries in relation to them.

For the purposes of the argument, however, and for that alone, let it be taken that, in substance or in method, some of the things here may not be authorized by law.

The matter of severability is one to which the courts have given great attention because of the principle that it is the duty of courts to uphold contracts rather than destroy them. *Chenango Bridge Co.* v. *Binghamton Bridge Co.*, 3 Wall. 51. And where some parts may not be upheld it is the duty of the courts to uphold so much as is lawful if that may be separated out. The question of severability is to be ascertained from the intent of the parties as expressed in the contract or contracts. Among the clear indications of intent the courts find such matters as that the parties have apportioned the various things to be done and the considerations or prices to be paid for each. This is always regarded as a strong indication that the parties intended the particular covenant and the particular consideration indicated for it as being separable from other things in the contract.

McCullough v. *Virginia*, 172 U. S. 102, 113, 114.

Oregon Steam Nav. Co. v. *Winsor*, 20 Wall. (87 U. S.) 64, 70;

United States v. *Hodson*, 10 Wall. (77 U. S.) 395;

Gelpcke v. *City of Dubuque*, 1 Wall. (68 U. S.) 221 (Case No. 79);

United States v. *Bradley*, 10 Peters 343, 360;

Ramsay v. *Creelin* (C. C. A. 8), 254 Fed. 813, 820;

Edgar v. *Ames* (C. C. A. 8), 255 Fed. 835, 838;

3 Williston on Contracts, Section 1781.

As we have hereinbefore shown, the instrument of April 7, 1922, constitutes not a single contract but contains two contracts; first, a lease of the oil lands and second, an agreement as to the disposition of the royalty oils accruing to the lessor under the lease, permitting the Government to choose as to the equivalents to be received by way of compensation but leaving the amount of the compensation fixed and determined, and we have likewise seen that the supplemental agreement of February 9, 1923 was executed pursuant to the exercise by the Government of certain of the options reserved to it in the contract of April 7 in relation to the disposition of its royalty oils.

On the question of severability the above mentioned contracts present four separate matters:

First: The lease contained in the instrument of April 7, 1922 severs itself naturally from anything and everything contained in the collateral agreement embraced in the same instrument and contained in the supplemental agree-

ment of February 9, 1923. The sole consideration for the lease proper is the promise by the lessor to develop the lands and pay a certain specified portion of the oil produced therefrom as royalties. The disposition of the royalties to be received by the lessor constitutes no part of the price paid for the lease. If all of the collateral agreement in relation to the disposition of royalties be held unlawful, the lease may be left to stand stripped of such collateral agreement and the Government may receive its specified portions of the oil produced, which it has agreed constitute full compensation to it for the lease.

SECOND: The collateral agreement contained in the instrument of April 7, 1922, indicates fully the intention of the parties as to the matters involved in it, namely, the disposition as between the parties of the royalty oil, without reference to any provision of the lease proper. We do not deem it material, for the purpose of determining the severability of this collateral agreement from the lease proper, to distinguish in any way between the various options reserved by the Government in said agreement as to the equivalents to be received by way of compensation for its royalty oils because the consideration to be paid for the royalty oils is fixed whether the option to take cash or the option to take fuel oil or other oil products with or without storage facilities be exercised. Nothing in the lease proper as contained in the instrument dated April 7, 1922, enters at all into the consideration to be paid by the lessee for the royalty oils. The collateral agreement as to the royalty oils is therefore by its own terms not only severable but actually severed in the written instrument. This actual

severance results from the fact that it is a separate, independent agreement on its own separate, independent consideration, notwithstanding it is written within the borders of the same instrument as the lease proper. If, therefore, it was lawful to dispose of the royalty oil at the prices fixed and without competitive bidding, this disposition must be upheld. But if, contrary to our expectation, it be held that the officers of the Government might not so dispose of the royalty oils for the prices stated or in the manner stated, then the collateral agreement contained in the written instrument of April 7, 1922, relating to the disposition of the lessor's royalty oils, should be stricken out, leaving the lease to stand on the consideration of the development of the property and the delivery of royalty oils on the scale contracted for.

THIRD: As a subdivision of the discussion as to the agreement disposing of the royalty oils, it is to be noted that the entire agreement shows that the disposition was a sale or an exchange depending upon the option chosen by the Government. Oil certificates are given which amount practically to receipts for royalty oils delivered, both as to the amount of oil and the value thereof. These receipts are redeemable at the option of the Government in cash or in fuel oil or in other oil products suitable for use by the Navy or, to the extent that the Government elects to receive fuel oil for storage facilities necessary (and only for such as are necessary) to conserve the fuel oils so received. If it be held that it was unlawful for the Government to receive for its royalty oils anything but cash, then the other options may be stricken from the contract and

the Government will still receive what it has agreed will be full compensation for its royalty oils. If it be held that the Government might lawfully receive in exchange for its royalty oils, fuel oil and other oil products, but might not lawfully receive storage facilities, then the options for exchanging for fuel oil and other oil products should stand with the option to receive cash and every provision relating to storage construction should be eliminated. Of course, in that event, among the things eliminated would be every provision requiring prior notice for the exercise of the option held to be illegal. And in case all the options other than the option to take payment for the royalty oil in cash disappear, then every provision for notice before the Government would be entitled to cash, would likewise disappear and cash would be payable without notice on the basis provided for. Moreover any provision of the agreement, the effect of which is to limit the exercise of any option in favor of any other option, would be eliminated from the agreement in the event such other option should be eliminated as illegal. This Court has recently had occasion to decide that where promises are in the alternative, the fact that one of them is at the time or subsequently becomes legally impossible of performance, does not relieve the promisor from performance of the legal promise. In *Yankton Sioux Tribe of Indians v. United States*, No. 230 October Term, 1926, decided November 22, 1926, it is said:

> "The general rule undoubtedly is that where there is a legal impossibility of performance appearing on the face of the promise there is no contract in respect of it. But here the undertaking of the gov-

ernment is in the alternative—that either the question of the title of the Indians shall be referred to this court for determination, or, in default of that being done, title in fee shall vest in the Indians. Granted the impossibility of the first alternative, the government, nevertheless, took the risk, and must, in accordance with its definite undertaking to that effect, suffer the stipulated consequence, in virtue of the principle that, where promises are in the alternative, the fact that one of them is at the time, or subsequently becomes, impossible of performance does not, at least without more, relieve the promisor from performing the other."

See also:

Jenson v. *Toltec Ranch Co.*, (C. C. A. 8), 174 Fed. 86, 91;

DaCosta v. *Davis*, 1 Bos. & P. 242, 126, Eng. Reprint 882;

Stevens v. *Webb*, 7 Car. & P. 60;

3 *Williston on Contracts*, Sec. 1779.

Fourth: The supplemental agreement of February 9, 1923, was by the parties themselves, severed and executed separately. If it were not authorized by law or if the method of obtaining it were on account of the absence of competitive bidding or any other thing rendered unlawful, it was clearly severed. As we have hereinbefore seen, it was executed under the exercise by the Government of three of the options reserved in the collateral agreement contained in the instrument of April 7th, 1922. If all of said three options be held illegal, then the supplemental agree-

ment of February 9th, 1923, falls with such options leaving the lawful alternative in the Government to receive cash for its royalty oils. Moreover, if it be held that only the option to receive containers for the fuel oil and other oil products is unlawful, then the supplemental agreement may be severed without affecting the exercise of the options to receive fuel oil and other oil products suitable for use by the Navy in addition to the option to receive cash. Again, if it be held that all of the options are legal but that the supplemental agreement is without authority of law in respect of the places designated for the storage then, such supplemental agreement may be stricken out leaving to the parties the matter of making a lawful agreement in respect of the places where the storage necessary to conserve the fuel oil and other oil products shall be located.

In that connection it is to be borne in mind, as we have hereinbefore shown, that neither the lease nor the collateral agreement contained in the instrument of April 7th, 1922, provides for any fuel depot or for any designated storage project or for the location of any storage but that the matter of the location of any storage which the Government might request be constructed to conserve fuel oil which it might elect to receive in exchange for royalty oils is expressly left to the Government and to the Government alone.

Competitive Bidding.

It is charged in the Bill that the lease is void because of the absence of competitive bidding. No suggestion that competitive bidding is required will be found in the Act of June 4th, 1920.

Moreover there is no general statute of the United States requiring competitive bidding for the leasing of oil lands and indeed there is no such statute requiring competitive bidding for the disposition of government property generally.

Up to February 25th, 1920 the policy laid down by Congress as to the disposition by the Government of its rights in oil lands was found in the placer mining law. Under this law the Government gave the oil lands without advertisement or competitive bidding. On February 25th, 1920 the General Leasing Law was enacted. That Act contained the first provisions which in any way laid down the Government's policy as to the method by which leases on public mineral lands might be acquired and operated and they did not disclose any uniform policy requiring competitive bidding.

Section 2 provides as to coal lands outside of Alaska that the Secretary of the Interior "shall award leases thereon by competitive bidding or by *such other methods as he may by* general regulations adopt". (Italics supplied.)

Section 9 as to phosphate lands authorizes the Secretary to lease "under such restrictions and upon such terms as are herein specified through advertisement, competitive bidding *or such other methods as the Secretary of the Interior may by general regulation adopt.*" (Italics supplied.)

Section 13 authorizes the Secretary to grant permits upon lands not in a producing oil field "*under such necessary rules and regulations as he may prescribe.*" (Italics supplied.)

Section 14 gives to the permittee who may discover oil the right to lease for one fourth of the area in his permit at 5% royalty and $1 per acre. It also gives to the permittee a preference right to a lease of the other three fourths of his acreage, the royalty to be determined by "competitive bidding or fixed by *such other methods as the Secretary may by regulations prescribe.*" (Italics supplied.)

Here it will be seen that there is no competitive bidding whatever as to the original permit nor as to the lease for the first one fourth and not necessarily competitive bidding as to the other three fourths.

Section 17 authorizes the Secretary to lease unappropriated lands within producing oil fields "to the highest responsible bidder by competitive bidding under general regulations." The provision seems to authorize bidding upon the bonus to be paid and to leave the fixing of the royalty to the Secretary of the Interior and such was the practice followed under this section.

Section 18 gives to certain claimants of oil lands the right under certain conditions to lease the lands at a royalty at not less than 12½% and the amount of "royalty shall be fixed by the Secretary of the Interior under appropriate rules and regulations." Naval Petroleum Reserves are excluded from this right. However, the producing wells within the Naval Petroleum Reserves are to be leased by the Secretary of the Interior and it is further provided "that the President may in his discretion lease the remainder or any part of such claim upon which such wells have been drilled and in the event of such leasing said claimant or his successors shall have the prefer-

ence right to such lease; and provided further that he may permit the drilling of additional wells by the claimant or his successor within the limited area of 660 feet theretofore provided for *upon such terms and conditions as he may prescribe.*" (Italics supplied.)

Section 19 gives to certain claimants who have not discovered oil on the lands claimed the right "to lease thereon under such terms as the Secretary of the Interior may prescribe."

As to oil shale lands Section 21 authorizes a lease by the Secretary "under such rules and regulations not inconsistent with this Act as he may prescribe."

Section 22 dealing with oil lands in Alaska provides that the leases "*shall be upon such rental and royalties as shall be fixed by the Secretary of the Interior and specified in the lease* and be subject to re-adjustment at the end of each twenty year period of the lease." (Italics supplied.)

Section 24 dealing with sodium lands provides that "they may be leased by the Secretary of the Interior through advertisement, competitive bidding *or such other methods as he may by general regulations adopt.*" (Italics supplied.)

If any thought is clear as to the Act of February 25, 1920 it is that Congress refused to adopt any one method of negotiating leases covering mineral lands generally or even oil lands. Would anyone for a moment contend that in carrying out any of the provisions of the Act of February 25th, 1920 any general statute as to competitive bidding must be followed? And besides as we have seen there is no such statute in disposing of Government property.

cruing to the United States under the lease, and that in the exercise of such judgment and discretion the Secretary of the Navy disposed of such royalty oils to the lessee, taking from the lessee in consideration therefor an agreement by the lessee that it would compensate the United States for the royalties in either of three ways as the United States might elect, (1) in cash, (2) in fuel oil, (3) in other oil products suitable for use by the Navy. As to fuel oil elected to be received in exchange, the United States might take such oil without containers or it might, but only to the extent necessary, also receive containers for the conservation of the fuel oil received.

Therefore, that "the authority granted by the Act of June 4, 1920 is sufficient to authorize the * * * contract" for the disposition of the royalty oils.

THIRD: That the existing facts on February 9, 1923 were such as to authorize the Secretary of the Navy in the exercise of his judgment and discretion to exchange the royalty oils from the leased lands for fuel oil and other products suitable for Naval use, together with containers necessary for the conservation thereof, and, therefore, that "authority granted by the Act of June 4, 1920 is sufficient to authorize the * * * contract" of February 9, 1923.

FOURTH: That neither of the contracts here involved was upon an inadequate consideration to the United States.

FIFTH: That there is no general statute requiring competitive bidding in negotiating leases of oil lands of the United States or in disposing of its royalty oils.

Therefore, that the absence of competitive bidding will not render invalid the lease or the agreement disposing of the royalty oils; that as to the agreements in relation to such containers as might be necessary "the Act of June 4, 1920 * * * was complete in itself and that it did not repeal nor was it dependent on other acts with relation to the public lands" * * *; that "This special statute, not repealing the general statutes, the two stand together, one as the law relating to a special thing, viz., the naval reserves,—the other relating to general public land matters. It was therefore unnecessary that there be competitive bidding or advertising as to the making of the lease and contract, and other statutes with relation to the method of transacting the general public business of the United States were not applicable to this situation, the special statute fully covering the same" (R. 814).

If, however, it be held on any ground that the agreement as to constructing storage facilities is invalid, we submit that this would not destroy the other valid agreements but in that case every matter relating to the invalid agreements must be stricken from the contracts. This would leave to the United States full compensation and what it has contracted should be full compensation for the lease and for the royalty oils which it disposed of to the lessee.

We submit, however, that the finding of the Circuit Court of Appeals wherein it differs from the finding by the District Court and upon which it reversed the decree of the District Court, namely, the finding that there was bribery of Secretary Fall by Mammoth Oil Company or its

representative is not sustained by any evidence, but consists of inference, drawn not from any fact or circumstance proved but from numerous other inferences, the basic inferences themselves having been improperly and illegitimately drawn.

We submit that the finding and decree of the Court of Appeals should be reversed and that the finding and decree of the District Court should be in all things affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 719.

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY and SINCLAIR PIPE LINE COMPANY,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

SEPARATE BRIEF OF THE PETITIONER, SINCLAIR PIPE LINE COMPANY.

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UNITED STATES OF AMERICA,
Respondent.

SEPARATE BRIEF OF THE PETITIONER, SINCLAIR PIPE LINE COMPANY.

Certiorari to Review the Decree and Judgment of the United States Circuit Court of Appeals for the Eighth Circuit, Reversing the Decree and Judgment of the District Court of the United States for the District of Wyoming.

Statement of the Case.

Mammoth Oil Company, one of the petitioners, has in its brief set forth the facts involved in the controversy between Mammoth Oil Company and the respondent, United States of America, but in order that the court may be advised con-

cerning the state of the record with which this petitioner is separately concerned, we will briefly state the portion thereof showing the controversy between your petitioner and the respondent, as your petitioner is only incidentally or collaterally interested in the controversy between Mammoth Oil Company, as petitioner, and the respondent.

This suit was commenced in the District Court of the United States for the District of Wyoming by the filing on March 13th, 1924 of a bill in equity by the United States of America as plaintiff (respondent in this court), the relief prayed being the cancellation of a lease executed and delivered to Mammoth Oil Company, dated April 7th, 1922, and a supplemental contract dated February 9th, 1923, and to enjoin further operations by said Mammoth Oil Company under said lease and contract, and to prohibit it, as such lessee, from further trespassing upon the land in controversy situated in the State of Wyoming, which tract of land is commonly known as Naval Reserve No. 3 or "Teapot Dome", and to procure an accounting from said lessee for the oil and other minerals taken from said land under said lease and contract (R., pp. 2 to 52).

The only allegations in the bill applicable to your petitioner are found in paragraph 33 of the original bill of complaint (R., p. 11), which read as follows:

> "3. Defendant Sinclair Pipe Line Company, as plaintiff is informed, claims to have and to hold certain rights derived from defendant Mammoth Oil Company, and by its servants, agents, and employees has erected and maintained certain structures upon the lands described in paragraph 4 hereof. Plaintiff avers that said defendant Sinclair Pipe Line Company, although alleging certain rights to be upon said land, derived from said defendant, Mammoth Oil

> Company, is nevertheless a trespasser upon said lands."

The relief prayed against your petitioner is found in the seventh and eighth subdivisions of the prayer for relief (R., p. 12), which read as follows:

> "(7) That your honorable court commanded the defendant, Sinclair Crude Oil Purchasing Company, and the defendant Sinclair Pipe Line Company, to make discovery in this action of their alleged rights to possession and occupancy of the said lands described in the bill of complaint, or any part thereof, adjudicate the rights of said defendants in the premises, and enter a decree against them in relief of the plaintiff's right of possession.
>
> "(8) Such other and further relief as to your honorable court shall seem meet in the premises."

On March 13, 1924, the District Court appointed receivers of the property (R., p. 52), but excluded from such receivership the pump station, pipe line, material and other equipment theretofore placed upon said land by your petitioner, said order providing (R., p. 53):

> "* * * and PROVIDED, FURTHER, that said receivers shall not take possession or control unless ordered to do so by the further order of this court, of the pump station, bunk houses, warehouse, office, boiler house, reservoir, or pumps or machinery, and other property located therein, nor of the pipe line crossing the real property described in said bill, nor of the four (4) steel oil storage tanks numbered 832, 834 and 835, all said buildings and tanks being located on the Northwest Quarter (NW^1_4) of Section Twenty-seven (27), of said real property; nor shall they

take possession or control of the six (6) cottages located near the northeast corner of Section Twenty-three (23) of said real property, which pump lines, pump stations, cottages, tanks and other buildings in this proviso mentioned are claimed as the property of the defendant, Sinclair Pipe Line Company."

Your petitioner in its answer to said bill denied knowledge of any of the matters alleged in the bill as a basis for cancellation, and put in issue the said matters (R., pp. 76 to 84, inc.), and in paragraph 34 (R., p. 81) alleged that under date of December 20, 1922, the United States, acting by and through the Secretary of the Interior and the Secretary of the Navy, together with Mammoth Oil Company, executed and delivered a contract in writing with your petitioner, by the terms of which your petitioner was accepted by the United States as the nominee and assignee of Mammoth Oil Company to construct and operate the pipe line which Mammoth Oil Company in its lease contract of April 7th, 1922, had agreed to construct or cause to be constructed; that as the result of such contract so executed by the United States, your petitioner did perform said contract of construction, relying upon the validity of said contract, and by virtue thereof it expended in constructing a pump station, pipe line and other equipment upon said naval reserve approximately the sum of seven hundred thousand dollars, and included in such equipment were four steel oil storage tanks upon said reserve which were used and necessary to be used in the operation of said station and the main pipe line upon said naval reserve for the transportation of oil therefrom, and that relying upon said contract your petitioner further constructed its main pipe line from said pump station in a

southerly direction across said reserve for the transportation through said pipe line system of oil that might be tendered to this defendant as a common carrier and extended said pipe line system from said naval reserve in Wyoming to the pipe line system of your petitioner near Freeman, Missouri, at a cost of approximately eighteen million dollars; a copy of said contract is attached as "Exhibit A" to said answer (R., pp. 84, 85, 86).

No additional pleadings were filed and the case, so far as this petitioner was concerned, was tried upon the original bill of compalint and the answer of your petitioner thereto as aforesaid.

For brevity we will hereafter refer to the District Court of the United States for the District of Wyoming as the "District Court" and to the United States Court of Appeals for the Eighth Circuit as the "Court of Appeals".

The case was tried in the District Court, resulting in findings for your petitioner, which court dismissed the bill of the plaintiff below (respondent herein) as against your petitioner; no evidence was offered at the trial or contained in the record to prove or in any way tend to prove or show that your petitioner had any connection with the procuring of or execution of the lease contract of April 7th, 1922, to Mammoth Oil Company, and the first that your petitioner is shown to have had anything to do with the matter was on December 20th, 1922, when the contract hereinabove mentioned was executed between it and the United States, which was eight months after the execution and delivery of the lease to Mammoth Oil Company of April 7th, 1922, the validity of which was the principal matter in controversy between the petitioner, Mammoth Oil Company, and the respondent.

The United States appealed to the Court of Appeals, and that court reversed the findings of the District Court on the question of fraud, and found that the contracts between the United States and the Mammoth Oil Company were fraudulently obtained and remanded the case to the District Court, with instructions (R., p. 852):

> "* * * to enter a decree
>
> "(a) Cancelling the lease of date April 7, 1922, made by the United States with the Mammoth Oil Company and the contract supplemental to said lease signed February 9, 1923, as fraudulent,
>
> "(b) Enjoining the appellees from further trespassing upon the lands of appellant described in said lease, and
>
> "(c) Providing for an accounting on the part of the appellee, Mammoth Oil Company, for the value of all oil and other petroleum products taken under said lease and contract."

With reference to the claims and defenses of your petitioner, the Court of Appeals in its opinion (R., p. 850) said:

> "Appellees, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, claim certain rights which are derived from appellee, Mammoth Oil Company. The Sinclair Pipe Line Company was granted an easement for pipe lines, buildings and structures necessary to operate the same. It has spent large sums in constructing the same. It has also invested large sums in constructing a pipe line system, relying on the easement or right of way granted across said naval reserve. Its stock is owned by the Sinclair Consolidated Oil Corporation and the Standard Oil Company of Indiana in equal propor-

tions. Mr. Sinclair is or was Chairman of the Board of Directors of Sinclair Consolidated Oil Corporation and probably its largest stockholder.

* * * * * *

"Are these two appellees trespassers upon said naval reserve?

"It is argued that in case of cancellation of the lease and contract appellant be required to do equity in the consequent accounting. The rights of the Sinclair Crude Oil Purchasing Company and the Sinclair Pipe Line Company are based upon the lease of the Mammoth Oil Company. Credit in the accounting or otherwise for moneys expended by these appellees could only be allowed if they were innocent trespassers and expended the money and made the improvements in good faith.

"As our conclusion is that the lease and contract were procured through fraud and corruption, each of the appellees is a *mala fide* trespasser on the Government lands, and therefore no credit for expenditures can be allowed any of them by the Court, and a full accounting of the value of the oil extracted must be rendered. Causey *v.* United States, 240 U. S. 399; United States *v.* Trinidad Coal and Coking Co., 137 U. S. 160; Pan-American Petroleum Co. *et al. v.* United States, 9 Fed. (2d) 761, 773. If appellees or any of them are entitled, upon a cancellation of the lease and contract, on the ground that they were fraudulently obtained from the United States, to credit for moneys expended in carrying out said contract, such relief must come from the Congress."

Specifications of Error.

First: The Court of Appeals erred in finding that there was any evidence as a matter of law to establish fraud in the making of the lease of April 7th, 1922, and the supplemental agreement of February 9th, 1923.

Second: The Court of Appeals erred in holding that Sinclair Pipe Line Company was a trespasser *mala fides* on the government land, as no fraud was alleged or proved as to it.

Third: The Court of Appeals erred in holding that Sinclair Pipe Line Company should be enjoined and restrained from entering upon Naval Reserve No. 3.

Fourth: The Court of Appeals erred in enjoining and restraining Sinclair Pipe Line Company, a common carrier, from entering upon Naval Petroleum Reserve No. 3, without affording it the opportunity to procure from the governmental authorities a right of way or easement to use the surface of said reserve for its pump station, pipe line and equipment necessary to be used in connection therewith, or, failing to procure such authority, without affording it the right to remove from said land the property it had in good faith placed thereon.

ARGUMENT.

Specification of Error No. 1.

As to the first specification of error we adopt the argument set forth in the brief of petitioner, Mammoth Oil Company, filed herein.

Specification of Error No. 2.

As we understand the opinion and decision of the Court of Appeals its conclusion that your petitioner is a *male fide* trespasser on government land appears to be based upon one of two alternatives:

First: That the capital stock of your petitioner, Sinclair Pipe Line Company, was owned one-half by Sinclair Consolidated Oil Corporation, and one-half by Standard Oil Company of Indiana, and that H. F. Sinclair, who controlled Mammoth Oil Company, a separate corporation, was Chairman of the Board of Directors of Sinclair Consolidated Oil Corporation and *probably* its largest stockholder, and that as the court finds that the lease contract was procured by H. F. Sinclair to Mammoth Oil Company by acts which the court finds to constitute legal fraud that therefore the fraud of the chief executive officer and probably largest stockholder of Sinclair Consolidated Oil Corporation, which owns one-half of the capital stock of your petitioner, is fraud to be imputed to your petitioner; or,

Second: That because the court finds that the lease contract of April 7th, 1922, was procured for Mammoth Oil Company by Mr. Sinclair through fraud, that such finding of fraud renders such lease contract void *ab initio*, and no third person or corporation could obtain any rights or equities therein or flowing therefrom, even though they acquired such rights without notice and expended money in good faith relying upon the validity of such lease contract.

With reference to the first proposition—it is not in any way shown by the record that Mr. Sinclair was in any way

in control of petitioner, Sinclair Pipe Line Company, other than that he was the chief executive officer of a corporation which was the owner of one-half of the capital stock of your petitioner; while the rule is generally applied that knowledge of an officer acting for a corporation and on its behalf is imputed to the corporation for which he is an officer and for which he is acting, that rule has no application here, as what we are discussing here is a ruling that knowledge of a fraud found to have been committed by a stockholder of a corporation, which corporation owns only one-half of the capital stock of a third corporation, is such knowledge to such third corporation of such fraud that it is to be imputed to such third corporation.

> "By the great weight of authority, however, since the directors do not individually represent the corporation, and have no power to bind it, except collectively, and as a board, notice of facts casually acquired by individual directors, where they do not communicate their knowledge to the other directors or officers, and do not act officially in the matter, is not notice to the corporation."
>
> —Fletcher Cyclopedia Corporations, Vol. 4, Sec. 2232.
>
> Fidelity and Deposit Co. v. Courtney, 186 U. S. 342, 46 L. Ed. 1193.

> "It is well settled, therefore, as a general rule that (1) where an officer is dealing with the corporation in his own behalf, or (2) is, for any other reason, interested in a transaction adversely to the corporation, knowledge possessed by him in the transaction is not imputable to the corporation."
>
> —Fletcher Cyclopedia Corporations, Vol. 4, Sec. 2243.

In American National Bank *vs.* Miller, 229 U. S. 517, 57 L. Ed. 1310 (p. 521, 522), this court said:

> "This presents another phase of the oft-recurring question as to when and how far notice to an agent is notice to his principal. In view of the many decisions on the subject, it is unnecessary to do more than to apply them to the facts of this case. If Plant, within the scope of his office, had knowledge of a fact which it was his duty to declare, and not to his interest to conceal, then his knowledge is to be treated as that of the bank. For he is then presumed to have done what he ought to have done, and to have actually given the information to his principal.
>
> "But if the fact of his own insolvency and of his personal indebtedness to the Nashville Bank were matters which it was to his interest to conceal, the law does not by a fiction charge the Macon bank, of which he was president, with notice of facts which the agent not only did not disclose, but which he was interested in concealing."
>
> "And even when the officer is acting for the corporation in the matter, as well as for the other corporation or person, his knowledge is not imputable to the corporation, where the facts are such that the other corporation or person is not under any duty to communicate them. In such a case there is a conflict of interest and duty on the part of the officer, and there is no presumption either way as to his communication of knowledge. Thus, if one corporation borrows money from another or enters into any other contract, through the intervention of the common officer, the latter corporation is not chargeable with the officer's knowledge that the money is borrowed or the contract made for an illegal or *ultra vires* purpose."
>
> —Fletcher Cyclopedia Corporations, Vol. 4, Sec. 2248.

Conceding, for the purpose of illustration only, that it should be finally held that Mammoth Oil Company procured its lease from the government through fraudulent acts of Mr. H. F. Sinclair as its President and controlling stockholder, and that he was also the owner personally of one-half of the capital stock of your petitioner (which is much broader than the facts shown by this record), nevertheless under the above and foregoing rules and principles, his knowledge of any fraud theretofore committed in procuring the lease for the Mammoth Oil Company would not be imputed to your petitioner, when it accepted the assignment from Mammoth Oil Company of the right of way or easement to construct the pipe line upon the land described in the lease to Mammoth Oil Company, which assignment was approved in writing by the duly authorized officers of the United States.

With reference to the second proposition—the Court of Appeals found that the contract of assignment which was executed on behalf of the United States by the Secretary of the Interior and the Secretary of the Navy in December, 1922, was executed prior to any attempt on behalf of the government to rescind the lease contract of April 7th, 1922 (R., p. 859).

It is the general rule that fraud does not render a contract void *ab initio* but that such contract is only voidable and is valid until rescinded, or an attempt is made to rescind by the party alleging the fraud.

In Diamond Coal and Coke Co. v. United States, 233 U. S. 236, 58 L. Ed. 936, this court said:

> "A patent secured by such fraudulent practices, although not void or open to collateral attack, is nevertheless voidable, and may be annulled in a suit

> by the government against the patentee or a purchaser with notice of the fraud."

It is clear that any rights or equities in favor of your petitioner accrued to it while such contract was in full force and effect and before any attempt had been made to rescind it by the government, and that your petitioner constructed its station and pipe line upon the naval reserve in reliance upon its right so to do by virtue of its contract with the government made in December, 1922, and there was no evidence offered and no contention made by the government that such contract of December 1922 was procured by your petitioner from the government officials as the result of any fraud or misrepresentation practiced upon the cabinet officers representing the government in the execution thereof.

The Court of Appeals further said (R., p. 851):

> "Credit in the accounting or otherwise for moneys expended by these appellees could only be allowed if they were innocent trespasses and expended the money and made the improvements in good faith."

The Court of Appeals apparently overlooked the fact that your petitioner was not asking or seeking any accounting for the value or cost of its pump station and main pipe line placed upon the naval reserve, but was only asserting that by virtue of the facts and the contract with the government of December, 1922, it was not a trespasser *mala fides* but constructed its line and pump station upon said reserve in good faith and without notice of any defects or fraud in the procuring of said original lease contract of April 1922 by Mammoth Oil Company, and that

thereby it was entitled to maintain its property and pump station upon the surface of the naval reserve. It was shown that your petitioner had expended in excess of seven hundred thousand dollars in constructing its pump station, pipe line and equipment connected and operated in connection therewith upon and across the naval reserve (R., p. 739), and that such pump station and pipe line was a part of its main line system and used for the transportation of oil as a common carrier in interstate commerce, and therefore by virtue of the laws of the United States governing common carrier pipe lines, it was subject to the jurisdiction and control of the Interstate Commerce Commission.

It is our contention that the Court of Appeals, even though it found that the lease contract of April 7th, 1922, to Mammoth Oil Company was voidable on account of fraud in securing the execution of the same, nevertheless the facts herein set forth do not render your petitioner a trespasser *mala fide;* that it is not a trespasser in any respect but was entitled to remain in possession of the surface used by it for its pump station and pipe line system by reason of the fact that it was accepted by the United States, acting by the Secretary of the Navy and the Secretary of the Interior, as the assignee of Mammoth Oil Company of the right of way or easement theretofore granted Mammoth Oil Company, and that such acceptance by the United States of your petitioner as such assignee, there being no contention that such acceptance was procured by any fraud by your petitioner, constituted a new and independent grant of an easement or right of way to your petitioner entirely independent of Mammoth Oil Company; that if it be finally held that your petitioner is a trespasser upon any legal theory, then it could only be held to be an innocent trespasser, as it ac-

quired its easement or right of way by a contract from the government, without any knowledge imputed to it of the invalidity now alleged and held by the Court of Appeals to have existed in said lease contract of April 7th, 1922, and relying upon the validity of its easement or right of way it expended a large sum of money in constructing its pump station and pipe line upon said naval reserve.

Specification of Error Nos. 3 and 4.

The Court of Appeals in its judgment and decree (R., p. 852) directed the District Court to enter a decree—

> "(b) enjoining the appellees from further trespassing upon the lands of appellant described in said lease"—

the effect of which decree, as we construe it, would be that your petitioner, a common carrier pipe line company in possession of a portion of the naval reserve, would be enjoined from further use or possession of such portion of the reserve and the property it has constructed and placed thereon; if it should go upon the land after such injunction was issued to remove any of its property placed thereon, it would be in contempt of the District Court issuing such injunction and the pipe line system would not only cease to operate as a public carrier but would forfeit to the United States the property which it placed thereon and in which it invested in excess of seven hundred thousand dollars, and such property would be confiscated by the United States, merely because your petitioner consructed its pump station and main line upon the naval reserve believing it had the legal right so to do.

We are unable to see that the District Court would have any power, in the execution of such a mandate from the Court of Appeals, to exercise any discretion in the terms of such injunction, as it was directed to enter its decree enjoining your petitioner from further trespassing upon said land.

It is our contention that an injunction granted by a court of equity in a case of this kind to stop further trespass and retention of possession should be in the alternative, and not become finally effective until a reasonable time had been given the common carrier to procure from the proper governmental authorities a right of way or easement to continue to use such surface upon proper payment therefor, or, failing so to do, that it be required to remove from the government land the property it had in good faith placed thereon believing it had a legal right to do so.

This Court has had occasion to consider a somewhat similar contention and in the case of Utah Power & Light Company v. United States, 243 U. S. 389, 61 L. Ed. 791, at page 403, stated the object of a suit of this kind to be as follows:

> "The principal object of the suits, as is said in one of the briefs, is to test the validity of these asserted rights, and, if they be found invalid, to require the defendants to conform to the legislation of Congress, or, at their option, to remove from the Government lands."

That case involved the right of a power and light company and this Court found that it was a trespasser upon Government land because it was occupying the surface thereof without legal right so to do, and yet there was no attempt to

enjoin such further trespass so as to confiscate property placed on Government land without legal rights to do so.

In Chicago, Milwaukee & St. Paul Railway Co. *v.* United States, 244 U. S. 351, 61 L. Ed. 1184, this Court said (p. 359):

> "The decree unconditionally commands the execution and filing of the prescribed stipulation without awarding an alternative injunction and counsel for the Government suggests that it should have enjoined the company from the further occupation of the Reserve, unless, within a prescribed time, the stipulation be executed and filed. The criticism is not without merit, and doubtless is prompted by a careful study of the bill. But, as the Government has not appealed and the company is not complaining of the failure to put the matter in the alternative, the point may be passed without further notice."

We are here complaining of the failure of the Court of Appeals to direct the Trial Court to issue the injunction—if it is to be finally issued—in the alternative, and we contend that the injunction ordered by the Court of Appeals should have been in the alternative, to wit, that unless within a time to be fixed by the Trial Court the pipe line company should procure authority from the proper officials representing the United States to occupy the surface of the Naval Reserve with its pump station, equipment and pipe line, or failing so to do, to remove its property placed on Government land without right, that then and only then should it be enjoined from further trespass or occupation of the Government lands, being Naval Reserve No. 3.

It should be further noted that the building of said pipe line, pump station, etc., involved solely the use of a small

portion of the surface of said land, and to no appreciable extent does it interfere with the full beneficial use of said land by the United States; that to hold it to be a trespasser and enjoined from further entering upon or using such surface will in no way be of benefit to the United States, and the continuation of such use would cause no detriment to the United States, but would cause a serious detriment to your petitioner as a common carrier pipe line serving the public to shut down its pipe line system and cause it to forfeit to the United States the value of the property and equipment it placed upon said naval reserve, believing in good faith that it had the legal right to do so.

A careful reading of the original bill of complaint filed by the respondent in the District Court will show that it was not filed as against your petitioner for the purpose of procuring an injunction against the further use of the land, and a forfeiture of any property placed upon the naval reserve by your petitioner, but the object of the bill was merely to procure a decree of the District Court that your petitioner is a trespasser upon said land and that that court adjudicate the rights of your petitioner in the land and enter a decree against your petitioner "in relief of the plaintiff's right of possession" (R., p. 11, 12); therefore the Court of Appeals in ordering the District Court to issue an injunction enjoining further entry upon said land by your petitioner, went beyond the case made by the bill as originally filed in this suit, and also went further than had ever been sought or argued by counsel for the respondent in the trial of this suit.

Conclusion.

We therefore submit that the judgment and decree of the Court of Appeals should be reversed as to your petitioner, and the decree of the District Court dismissing the bill of respondent should be affirmed, or, if not, that the order or decree directed to be entered by the District Court should be in the alternative, for the reasons hereinbefore set forth.

Edward H. Chandler,
Ralph W. Garrett,
Attorneys for Petitioner,
Sinclair Pipe Line Company.

IN THE

Supreme Court of the United States

October Term, 1926.

No. 728.

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY and SINCLAIR PIPE LINE COMPANY,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

SEPARATE BRIEF OF THE PETITIONERS SINCLAIR CRUDE OIL PURCHASING COMPANY AND SINCLAIR PIPE LINE COMPANY.

EDWARD B. CHAMBERS,
RALPH W. HARRIS,
Attorneys for Petitioners
Sinclair Crude Oil Purchasing Company and
Sinclair Pipe Line Company.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 719.

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY and SINCLAIR PIPE LINE COMPANY,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

SEPARATE BRIEF OF THE PETITIONER SINCLAIR CRUDE OIL PURCHASING COMPANY.

Certiorari to Review the Decree and Judgment of the United States Circuit Court of Appeals for the Eighth Circuit, Reversing the Decree and Judgment of the District Court of the United States for the District of Wyoming.

Statement of the Case.

Mammoth Oil Company, one of the petitioners, has in its brief set forth the facts involved in the controversy between Mammoth Oil Company and the respondent, United

States of America, but in order that the court may be advised concerning the state of the record with which this petitioner is separately concerned, we will briefly state the portion thereof showing the controversy between your petitioner and the respondent, as your petitioner is only incidentally or collaterally interested in the controversy between Mammoth Oil Company, as petitioner, and the respondent.

This suit was commenced in the District Court of the United States for the District of Wyoming by the filing on March 13th, 1924, of a bill in equity by the United States of America as plaintiff (respondent in this court), the relief prayed being the cancellation of a lease executed and delivered to Mammoth Oil Company, dated April 7th, 1922, and a supplemental contract dated February 9th, 1923, and to enjoin further operations by said Mammoth Oil Company under said lease and contract, and to prohibit it, as such lessee, from further trespassing upon the land in controversy situated in the State of Wyoming, which tract of land is commonly known as Naval Reserve No. 3 or "Teapot Dome," and to procure an accounting from said lessee for the oil and other minerals taken from said land under said lease and contract (R., pp. 2 to 52).

The only allegations in the bill applicable to your petitioner are found in paragraph 32 of the original bill of complaint (R., p. 11), which reads as follows:

> "32. Defendant Sinclair Crude Oil Purchasing Company, as plaintiff is informed, claims to have and to hold certain rights derived from defendant Mammoth Oil Company, and by its servants, agents, and employees has erected and maintained certain structures upon the lands described in paragraph 4

hereof. Plaintiff avers that said defendant Sinclair Crude Oil Purchasing Company, although alleging certain rights to be upon said land, derived from said defendant Mammoth Oil Company, is nevertheless a trespasser upon said lands."

The only relief prayed against this appellee is set forth in the seventh and eighth subdivisions of the prayer for relief (R., p. 12), which reads as follows:

"(7) That your honorable court commanded the defendant Sinclair Crude Oil Purchasing Company, and the defendant Sinclair Pipe Line Company, to make discovery in this action of their alleged rights to possession and occupancy of the said lands described in the bill of complaint, or any part thereof, adjudicate the rights of said defendants in the premises, and enter a decree against them in relief of the plaintiff's right of possession.

"(8) Such other and further relief as to your honorable court shall seem meet in the premises."

On March 13, 1924, the District Court appointed receivers of the property (R., p. 52), but excluded from such receivership the seventeen (17) steel oil storage tanks placed upon said real property and owned by this defendant, said order providing (R., p. 53):

"PROVIDED, HOWEVER, that said receivers shall not take possession or control, unless ordered to do so by the further order of this court, of the seventeen (17) steel oil storage tanks located upon portions of sections twenty-seven (27) and thirty-four (34) of the real property mentioned in said bill, said tanks being numbered 2004 to 2020, both inclusive, nor the contents thereof, which tanks and contents are

claimed as the property of the defendant, Sinclair Crude Oil Purchasing Company."

Your petitioner in its answer to said bill denied specifically any knowledge of any of the matters alleged in the bill as a basis for cancellation, and put in issue the said matters (R., pp. 69 to 76, inclusive), and in paragraph 34 (R., p. 74) alleged that Mammoth Oil Company, by the terms of the lease contract of April 7th, 1922, was granted the right to construct and maintain on the naval reserve tanks and other structures necessary to the development and operation of said property, and that thereafter and during the month of January, 1923, your petitioner purchased from Mammoth Oil Company all its steel oil storage tanks then erected or being built upon said land, and paid said Mammoth Oil Company therefor, and thereby became the owner of seventeen steel oil storage tanks, as the licensee and grantee of the Mammoth Oil Company, and became entitled to maintain said tanks upon said real property in all respects as Mammoth Oil Company was entitled to do by virtue of said lease contract of April 7th, 1922; that said tanks have been used for the storage of royalty oil purchased by your petitioner from the United States of America, being royalty oil produced upon government land in the Salt Creek field in the vicinity of said naval reserve.

No additional pleadings were filed and the case, so far as this petitioner was concerned, was tried upon the original bill of complaint and the answer of your petitioner thereto as aforesaid.

For brevity we will hereafter refer to the District Court of the United States for the District of Wyoming as the

"District Court", and the United States Court of Appeals for the Eighth Circuit as the "Court of Appeals".

The case was tried in the District Court, resulting in findings for your petitioner, which court dismissed the bill of the plaintiff below (respondent herein) as against your petitioner; no evidence was offered at the trial or contained in the record to prove or in any way tend to prove or show that your petitioner had any connection with the procuring of the execution of the lease contract of April 7th, 1922 to Mammoth Oil Company, and the first that your petitioner is shown to have had anything to do with the matter was on December 15th, 1922 and January 1923, these dates being more than six months after the execution and delivery of the lease contract of April 7th, 1922, and more than one year prior to the commencement of this suit in the District Court, the bill being filed in that court on March 13th, 1924.

The United States appealed to the Court of Appeals from the decree of the District Court dismissing its bill, and the Court of Appeals reversed the finding of the District Court on the question of fraud, and found that the contracts between the United States and Mammoth Oil Company were fraudulently obtained, and remanded the case to the District Court with instructions (R., p. 852):

> "* * * to enter a decree
>
> "(a) Cancelling the lease of date April 7, 1922, made by the United States with the Mammoth Oil Company and the contract supplemental to said lease signed February 9, 1923, as fraudulent,
>
> "(b) Enjoining the appellees from further trespassing upon the lands of appellant described in said lease, and

"(c) Providing for an accounting on the part of the appellee, Mammoth Oil Company, for the value of all oil and other petroleum products taken under said lease and contract."

With reference to the claims and defenses of your petitioner, the Court of Appeals in its opinion (R., p. 850) said:

"Appellees, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, claim certain rights which are derived from appellee, Mammoth Oil Company.

* * * * * *

"Appellee, Sinclair Crude Oil Purchasing Company, evidently controlled by Mr. Sinclair, purchased from the Mammoth Oil Company seventeen steel oil storage tanks on Naval Reserve No. 3, and became substituted as to the rights of the Mammoth Oil Company to maintain the same. This was before an attempt was made or any action taken, to rescind the said contract of April 7, 1922.

"Are these two appellees trespassers upon said naval reserve?

"It is urged that in case of cancellation of the lease and contract appellant be required to do equity in the consequent accounting. The rights of the Sinclair Crude Oil Purchasing Company and the Sinclair Pipe Line Company are based upon the lease of the Mammoth Oil Company. Credit in the accounting or otherwise for moneys expended by these appellees could only be allowed if they were innocent trespassers and expended the money and made the improvements in good faith.

"As our conclusion is that the lease and contract were procured through fraud and corruption, each of the appellees is a *mala fide* trespasser on the Govern-

ment lands, and therefore no credit for expenditures can be allowed any of them by the Court, and a full accounting of the value of the oil extracted must be rendered. Causey *v.* United States, 240 U. S. 399; United States *v.* Trinidad Coal and Coking Co., 137 U. S. 160; Pan-American Petroleum Co. *et al v.* United States, 9 Fed. (2d) 761, 773. If appellees or any of them are entitled, upon a cancellation of the lease and contract, on the ground that they were fraudulently obtained from the United States, to credit for moneys expended in carrying out said contract, such relief must come from the Congress."

Specifications of Error.

First: The Court of Appeals erred in finding that there was any evidence as matter of law to establish fraud in the making of the lease of April 7th, 1922, and the supplemental agreement of February 9th, 1923.

Second: The Court of Appeals erred in holding that Sinclair Pipe Line Company was a trespasser *mala fides* on the government land, as no fraud was alleged or proved as to it.

Third: The Court of Appeals erred in holding that Sinclair Crude Oil Purchasing Company should be enjoined and restrained from entering upon Naval Petroleum Reserve No. 3.

Fourth: The Court of Appeals erred in enjoining and restraining Sinclair Crude Oil Purchasing Company from entering upon Naval Petroleum Reserve No. 3 without affording it the right to remove from said reserve the property it had in good faith purchased and constructed thereon.

ARGUMENT.

Specification of Error No. 1.

As to the first specification of error we adopt the argument set forth in the brief of petitioner, Mammoth Oil Company, filed herein.

Specification of Error No. 2.

As we understand the opinion and decision of the Court of Appeals, its conclusion that your petitioner is a *mala fide* trespasser on government land appears to be based on one of two alternatives:

(1) That your petitioner was *evidently* controlled by Mr. H. F. Sinclair, who also controlled Mammoth Oil Company, a separate corporation, and as that court finds that the lease contract was procured for Mammoth Oil Company by Mr. Sinclair by acts which the court finds to constitute legal fraud, that therefore such fraud is to be imputed to your petitioner; or,

(2) That because the court finds that the lease contract of April 7th, 1922, was procured for Mammoth Oil Company by Mr. Sinclair through fraud that such finding of fraud renders such lease contract void *ab initio*, and no third person or corporation could obtain any right to place or maintain any storage tanks upon said leased premises, as assignee and licensee of Mammoth Oil Company, even though they acquired such right without notice and before any attempt was made to rescind said contract, and ac-

quired said tanks and paid therefor in good faith relying upon their right to maintain the same upon said naval reserve.

With reference to the first proposition, it should be noted that while the Court of Appeals finds that your petitioner was "evidently controlled by Mr. Sinclair", that this statement or inference is contrary to the facts contained in the record.

A. E. Humphries, a witness called on behalf of respondent, testified (R., p. 452):

> "Then the Governor took issue, and he was finally advised by someone present that the contract would be properly guaranteed, and the Prairie was offered for one, the Prairie Oil and Gas Company, and the Sinclair Crude Oil Purchasing Company for the second. I turned to the Governor and remarked to him that the two mentioned companies were entirely satisfactory to me. The Governor then in reply said, 'If they are satisfactory to you they are to me,' so that closed that incident. It is my recollection that Mr. Blackmer was the spokesman at the time this statement was made, but at the stage when the securities were offered, Mr. O'Neil talked for the Prairie and Mr. Sinclair for the Sinclair Crude Oil Purchasing Company. I don't remember that R. W. Stewart took any part save that he might have — my recollection is that he consulted with Mr. Sinclair before Mr. Sinclair volunteered their company as one of the guarantors.
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> • • • • • •
>
> "Stewart and Sinclair represented the Sinclair Crude in making this contract and O'Neil represented the Prairie. I had no knowledge of any other purpose of their being there." (R., p. 454).

H. L. Phillips, a witness called on behalf of plaintiff, testified (R., p. 457):

> "I was a Director and Vice President of Sinclair Crude Oil Purchasing Company on November 17, 1921. I was not present when Exhibit 125 was drafted. I first saw it in Chicago in November, 1921. I don't remember the date. At that time the stock of Sinclair Crude Oil Purchasing Company was owned one-half by the Standard Oil Company of Indiana and one-half by the Sinclair Consolidated Oil Corporation.
>
> "I think Mr. Sinclair was in Charge when that agreement was put to the Board of Directors. I didn't discuss it with him before it was adopted. I do not remember that Mr. R. W. Stewart, who I understood was then Chairman of the Board of Directors of the Standard of Indiana, was present when the contract was up for consideration by the Board of Directors.
>
> • • • • • •
>
> "Mr. Sinclair and Mr. Stewart, who signed the guarantee agreement for the directors (Pl. Ex. 124) were not at that time directors of the Sinclair Crude Oil Purchasing Company. I presume I saw that form of guarantee at the time the Directors' meeting was held in Chicago. I have no recollection of it definitely. When the contract between Humphreys Mexia Company and the Humphreys Texas Company and the Prairie and Sinclair Crude Oil Purchasing Company was presented to me it had been tentatively signed by Mr. Sinclair and Mr. Stewart for the Directors (R., p. 461).
>
> • • • • • •
>
> "Referring to the meeting of the Board of Directors where the contract by Sinclair Crude and

> Prairie with Continental (Pl. Ex. 125) was ratified in November, 1921, I am not sure whether I was advised at that meeting that Continental had bought this oil at $1.50 a barrel when I voted to approve the guartnee of Continental's contract. I may have been advised of the fact after that just a few days; I am not sure."

We think the effect of the record then shows in substance that the capital stock of your petitioner was owned one-half by Standard Oil Company of Indiana and one-half by Sinclair Consolidated Oil Corporation—that R. W. Stewart was Chairman of the Board of Directors of the Standard Oil Company of Indiana, and that H. F. Sinclair was Chairman of the Board of Directors of Sinclair Consolidated Oil Corporation, and that these two chairmen represented your petitioner in dealing with A. E. Humphries and signed the contract for the Directors, which act and contract was thereafter ratified by the Board of Directors of your petitioner, and that neither Mr. Sinclair nor Mr. Stewart was a director or officer of your petitioner. We therefore think that it is purely an inference for the Court of Appeals to base its conclusion that your petitioner was "evidently controlled by Mr. Sinclair" upon the statements above set forth, and that seems to be the foundation for the conclusion that your petitioner is a *mala fide* trespasser upon the naval reserve in maintaining its tanks thereon which it purchased from Mammoth Oil Company.

With reference to the second position, the Court of Appeals found that your petitioner purchased from Mammoth Oil Company the seventeen steel oil storage tanks on Naval Reserve No. 3 before any attempt was made or any

action taken to rescind the said contract of April 7th, 1922 (R., p. 850).

It is the general rule that fraud does not render a contract void *ab initio* but that such contract is only voidable, and is valid until rescinded, or an attempt is made to rescind by the party alleging the fraud.

In Diamond Coal and Coke Co. *v.* United States, 233 U. S. 238, 58 L. Ed. 936, this court said:

> "A patent secured by such fraudulent practices, although not void or open to collateral attack, is nevertheless voidable, and may be annulled in a suit by the government against the patentee or a purchaser with notice of the fraud."

There was no evidence offered and no contention made by the government that your petitioner had anything to do with the procuring of the lease contract of April 7th, 1922, and it is clear that it had bought and paid for said tanks a year before any attempt was made by the government to claim that fraud was practiced in procuring said lease contract of April 7th, 1922.

Specification of Error Nos. 3 and 4.

The Court of Appeals in its judgment and decree (R., p. 852) directed the District Court to enter a decree—

> "(b) enjoining the appellees from further trespassing upon the lands of appellant described in said lease"—

the effect of which decree, as we construe it, would be to enjoin your petitioner from entering further upon said naval reserve without affording it the right to remove

from said reserve said seventeen oil storage tanks which are merely placed upon the surface of said land, and prevent your petitioner from further using said tanks to store the royalty oil it purchased from the government, and would forfeit to the United States said tanks, which could be easily removed therefrom without injury to said land, except to do so would violate the injunction ordered to be issued by said District Court.

We conclude that the District Court would be without power, in the execution of such a mandate from the Court of Appeals, to exercise any discretion in the terms of such injunction, as it is directed to enter its decree enjoining your petitioner from further trespassing upon said land, and therefore said tanks would be forfeited to and confiscated by the United States, and your petitioner could make no effort to remove said tanks therefrom without violating such injunction.

It is our contention that an injunction granted by a court of equity in a case of this kind to stop further trespass should be in the alternative, and not become finally effective until a reasonable time had been given your petitioner to procure from the proper governmental authorities an easement or right to continue to use such surface upon proper payment therefor, or, failing so to do, that it be required to remove from the government land its property which it had in good faith placed thereon, believing it had a legal right to do so.

We have discussed this question more at length in the brief filed herein on behalf of Sinclair Pipe Line Company, one of the petitioners herein, and will therefore, for the sake of brevity, refer to that discussion and not repeat it in this brief.

The original Bill of Complaint only sought a decree of the District Court adjudging your petitioner a trespasser upon the land and the entry of a decree in relief of the plaintiff's right of possession (R., 11, 12) and was apparently not brought for the purpose of securing a decree of the District Court enjoining further entry upon the land, the effect of which would be to declare forfeiture or confiscation of the property placed thereon by your petitioner, and no such issue was presented to either Court by counsel; the Court of Appeals in decreeing such injunction and forfeiture went beyond the case made by the Bill, as we view it, and granted the relief of confiscation and forfeiture when no pleading had been filed or contention made in either Court that the respondent was entitled to any such relief if the Court of Appeals should reverse the decree of dismissal of the District Court. Doubtless counsel for the respondent in preparing the Bill realized that it would only be fair and equitable to obtain, in case they prevailed, a decree adjudging defendants to be in possession of the surface of said reserve without legal right, and then if such decree was affirmed upon appeal and your petitioner did not remove its property placed thereon, the relief of injunction could be secured from the District Court in an ancillary Bill filed for that purpose, if necessary. As hereinbefore stated your petitioner did not ask or seek either in the District Court or in the Court of Appeals, nor did it make any contention in either Court, that it was entitled to recover any accounting against the respondent, but merely that it had the equitable right to remain in possession, and if not, then to have a reasonable time to remove its property placed thereon, if it could not procure proper authority from the Governmental officials to authorize it

to maintain in the future its tanks upon said Naval Reserves, as such tanks are movable and merely placed upon the surface of the land and in no way injure such surface.

Conclusion.

We therefore submit that the judgment and decree of the Court of Appeals should be reversed as to your petitioner, and the decree of the District Court dismissing the bill of respondent should be affirmed, or, if not, that the order or decree directed to be entered by the District Court should be in the alternative, for the reasons hereinbefore set forth.

Edward H. Chandler,
Ralph W. Garrett,
Attorneys for Petitioner,
Sinclair Crude Oil Purchasing Company.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 719.

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY AND SINCLAIR PIPE LINE COMPANY, *Petitioners*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

I.

STATEMENT OF THE CASE.

It is unnecessary to make an extended statement of the issues presented by this petition for certiorari because they are precisely the same as those presented by the pending appeal of the *Pan American Petroleum and Transport Company and Pan American Petroleum*

Company, Petitioners vs. United States of America, Respondent, No. 305, on the docket of this Court, which was argued and submitted on October 5, 1926. The only different question which would be presented if the cause were heard on its merits relates to the law of evidence, involving principles which are well settled and which the Court of Appeals correctly applied.

Counsel for Respondent will therefore present the facts and the questions of law involved in a very summary way, simply to show the similarity of the issues to those involved in said Pan American Petroleum and Transport Company appeal, and to show that no public interest requires consideration of this cause upon its merits and that no legal rights of the Petitioners will be disregarded by denying their petition.

The order of the Court of Appeals in conformity with the prayer of the Bill in Equity declares null and void a certain lease and a certain contract supplemental thereto, between the Mammoth Oil Company and Respondent, pertaining to Naval Petroleum Reserve No. 3, Wyoming, commonly known as Teapot Dome; directs said Mammoth Oil Company and the other petitioners who derive all their rights through the Mammoth Oil Company to account to the United States for the value of all oil and other petroleum products extracted by them under said lease and contract and directs the Petitioners to cease trespassing upon said Teapot Dome.

The lease is an agreement dated April 7, 1922, whereby Respondent demised to Mammoth Oil Company all of Teapot Dome, subject to royalties in the form of stipulated percentages of petroleum products and sold to it the royalty oils accruing thereunder and in consideration thereof said Mammoth Oil Company

agreed to exploit said territory, to issue certificates representing the value of the royalty oils thus sold to construct a pipe line upon said territory, and to construct fuel oil storage tanks at various points on the Atlantic seaboard to be later designated by Respondent. The Mammoth Oil Company agreed to take said oil certificates in payment for storage so constructed.

The second and supplemental agreement is dated February 9, 1923, and designates the location and capacity of the storage facilities which said Mammoth Oil Company should construct in accordance with the lease agreement of April 7, 1922.

It is therefore plain that the lease and contract involved in this suit are the same in principle as the contracts and lease involved in the said Pan American Petroleum and Transport Company appeal. Differences are only in minor detail.

The issues presented by the pleadings and the evidence are naturally to be grouped under three headings as was done in the opinion of the Court of Appeals: First, were the lease of April 7, 1922 and the supplemental agreement of February 9, 1923, procured by fraud and the result of a conspiracy between Albert B. Fall, then Secretary of the Interior, and Harry F. Sinclair, owner of the Mammoth Oil Company? Second, was there authority of law to make the said lease and the said supplemental agreement and were they made in compliance with law? Third, must the Petitioners cease to trespass upon Teapot Dome and account for all petroleum products taken therefrom without credit for their expenditures?

II.

ARGUMENT.

A. The Lease of April 7, 1922, and the supplemental agreement of February 9, 1923, are voidable because procured by fraud.

The trial court concluded there was no fraud or conspiracy to defraud involved in the procurement of said lease and agreement. The Court of Appeals concluded exactly the opposite. The Court of Appeals said in its opinion (Record, pages 817-818) that fraud is not to be presumed, but must be established by clear, unequivocal and convincing evidence; that circumstantial evidence may be sufficient; that inferences of fact cannot be drawn from other inferences or rebuttable presumptions but must arise from circumstances proved; and that where the trial court has considered conflicting evidence and passed thereon its conclusion is entitled to great weight and, unless in the opinion of the appellate court it is against the weight of the evidence or is based upon a mistake, will not be disturbed.

But the Court of Appeals said in its opinion (Record, pages 817-818) that the views of the trial court are not controlling because this appeal does not present so much a dispute as to the evidence or the veracity of witnesses as it does an opportunity for differences of opinion with respect to the inferences to be drawn from all the circumstances appearing in the record; that the conclusion of the trial court is a mixed one of law and fact; and that an appellate court has the same right to draw conclusions from the silence or evasiveness of witnesses and to apply the law to undisputed

or clearly proven facts as has the trial court. In the opinion, (Record, pages 844-845), it is said:

> "Of course, a plaintiff in a case cannot insist that defendant must furnish evidence he may have or permit plaintiff to succeed, and there must be affirmative proof of facts prima facie at least to sustain plaintiff's contentions before inferences can be properly drawn. The language used by some courts is that there must be something laid at defendant's door. As before indicated, we are of the opinion that that situation existed here."

Thus in approaching its conclusion the Court of Appeals recognized all the principles of law contended for by Petitioners in their brief attached to the petition for certiorari. When this Court has read the opinion of the Court of Appeals and observed the careful consideration given to all the facts, all of which are thoroughly established by evidence in the record, counsel for Respondent do not believe this Court will find any mistake of law as to fraud and conspiracy or care to go into the proofs. This Court has said in *United States vs. Johnston (1925)*, 268 U. S. 220, p. 227, "We do not grant a writ of certiorari to review evidence and discuss specific facts."

The chronology of facts upon which the Court of Appeals based its conclusion that the lease and contract were procured by fraud and are the result of a conspiracy to defraud the United States, all of which are proved beyond doubt by evidence in the record may be summarized as follows:

At all times covered by the Bill the policy of the United States Government was to preserve in the ground all possible petroleum and petroleum products and to lease only such offset strips as were necessary

for protection against drainage. On May 31, 1921, by presidential Executive Order the administration of Naval Petroleum Reserves, vested by law in the Secretary of the Navy was, with the ready consent of Secretary of the Interior, Albert B. Fall, transferred to him. He thereafter proclaimed his policy in a letter of July 8, 1921, to his friend, Edward L. Doheny, to be to handle leases of lands in Naval Petroleum Reserves himself without consultation with anyone in the Navy Department except that on questions of policy he said he would consult the Secretary of the Navy himself. On July 23, 1921, Secretary Fall originated the idea of exchanging oil for tankage in which to store fuel oil.

On November 30, 1921, January 12, 1922, January 27, 1922, and February 18, 1922, reports were made by geologists in the Department of the Interior pursuant to investigations made by them, to Fall that Teapot Dome was in no immediate danger of drainage and that no leasing need be done for protection against drainage. October 25, 1921, the Secretary of the Navy advised Fall that Teapot Dome should only be developed as it became necessary for protection against drainage and entrusted discretion in the matter to Fall without reservation of any supervision. Copies of any leases which should be made were to be furnished to the Navy Department for information and record only, thereby indicating an abdication of all responsibility. October 30, 1921, Fall agreed to the policy.

On December 31, 1921, Sinclair and his counsel visited Fall at Three Rivers, New Mexico, and discussed the possibility of obtaining a lease of Teapot Dome. On January 27, 1922, Admiral Robison, a Naval administrative officer under the domination of Fall, and at the

request of Fall, advised Secretary of the Navy Denby that all of Teapot Dome must be leased to prevent drainage of oil contained therein and in reliance upon these false representations Secretary Denby agreed to lease the entire area. Fall and Sinclair had been in frequent conference and, almost immediately after the decision to lease the entire Teapot Dome, on February 3, 1922, Sinclair submitted his proposition for a lease and Fall instructed his subordinates to prepare a draft of a contract.

Fall made the acquisition of certain alleged claims known to him to be illegal and dead and the quit-claiming of same to the Government a condition precedent to a lease. Sinclair acquired these claims subject to the final award of a lease to him and on March 11, 1922, the Mammot Oil Company, having been organized by him the final proposition of it for a lease was submitted. April 7, 1922, the lease was signed by Fall as Secretary of the Interior and "for the Secretary of the Navy." As an afterthought the signature of the Secretary of the Navy was obtained before the delivery of the lease.

Fall knew that eminent attorneys for several large oil companies had expressed opinions that the plan of exchanging royalty crude oil from naval petroleum reserves for storage tankage and other considerations was illegal and beyond the authority of any officer of the Government. In utter disregard of the doubts which such opinions should have engendered in his mind, he nevertheless proceeded to make such lease and agreement without at any time obtaining either the opinion of the Solicitor of the Department of the Interior or the opinion of the Attorney General of the

United States. The only excuse offered for such conduct was that the Judge Advocate General of the Navy had approved of the legality of such a plan. But the opinion of the Judge Advocate General was given before such opinions were expressed by eminent attorneys and without consideration of the argument in their opinions.

No public notice of an intention to lease any part, let alone all, of Teapot Dome was given. Many applicants for leases, newspaper representatives and members of the Senate and House of Representatives of the United States were advised even after Sinclair had submitted his proposition that no lease of Teapot Dome or any part of it was contemplated. A few oil companies who somehow heard of a possibility that the reserve would be leased applied for information but were given only partial information. No real opportunity to bid or to acquire the claims which had to be conveyed to the Government and which Sinclair had already acquired was given to any other applicant. The transaction was closed by private negotiation, shrouded with the utmost secrecy including even an order to subordinates in the Interior and Navy departments that such information as they had should be carefully kept secret. Secrecy was observed in order to prevent competition and to avoid interference by Congress.

Neither Fall nor Sinclair were called to the witness stand by Petitioners to explain any of these badges of fraud and conspiracy. All of the foregoing circumstances and the silence of those charged with bad faith were taken into consideration by the Court of Appeals in its conclusion. It says in its opinion (Record, p. 828):

> "In the transaction of public business there is no necessity for scheming, deception or double dealing, nor unless in well-recognized, exceptional matters,—for secrecy. There was no legitimate reason for such secrecy as was thrown around this transaction. Secrecy is an aid to corruption—publicity its foe. If the secrecy was not to veil an ulterior purpose it was, at least as to Congress, to ward off any investigation until after the leasing was completed."

The Court of Appeals considered another evidence of fraud and conspiracy which requires separate treatment. Counsel for Respondent contended and the Court of Appeals found that shortly after the first lease of April 7, 1922, and before the supplemental agreement of February 9, 1923, to wit, on May 29, 1922, and as a part of the conspiracy agreement Sinclair gave Fall $230,500 in the form of United States Liberty Bonds. The proven facts with respect to this bond transaction are that Sinclair, among others, was present at conferences during which Col. A. E. Humphreys and corporations owned by him, sold $50,000,000 worth of oil to the Continental Trading Company, Ltd., a Canadian corporation, on November 17, 1921, with a guarantee of payment by, *inter alia*, Sinclair in behalf of the Sinclair Crude Oil Purchasing Company. Concurrently therewith, on November 17, 1921, said Continental Trading Company, Ltd., sold all the oil so purchased to the Sinclair Crude Oil Purchasing Company, Sinclair executing the contract for his company, and to the Prairie Oil and Gas Company, at a sure profit of $8,333,333.00 Did Sinclair sit in on all this performance and see his company contribute to such a huge profit without sharing in it? The profit was invested in United States Liberty Bonds as it accrued. With $6,000,000 sure profit yet to

accrue, on May 26, 1923, the Continental Trading Company, Ltd., assigned the Humphreys contract to the Sinclair Crude Oil Purchasing Company and the Prairie Oil and Gas Company for only $400,000. The Continental Trading Company's only business operation was thereby closed and on August 9, 1923, it went out of existence and its books were destroyed.

On May 8, 1922, H. S. Osler, nominal President of the Continental Trading Company, Ltd., received $300,000 in Liberty Bonds, $250,000 of which are identified by number by evidence in the record as including the same $230,500 worth of Liberty Bonds proven to have been in the hands of M. T. Everhart, Fall's son-in-law, on May 29, 1922. Everhart was shown by the evidence to have deposited part of them in banks for the account of Fall and to have used the remainder of them for the payment of debts of Fall. On May 26, 1923, Sinclair gave Fall $25,000 worth of Liberty Bonds.

Everhart refused to testify claiming so to do might incriminate him. Osler and his clerks, the other nominal officers of the Continental Trading Company, Ltd., refused to testify, claiming their information was gained as attorney from client. Fall and Sinclair were not called as witnesses. All others present at the negotiations with Humphreys and knowing anything about the Continental Trading Company affairs were "either conveniently absent from the country or strangely and eloquently silent." (C. of A. Op., R. 838.) As stated above, the books of the Continental Trading Company, Ltd., were destroyed.

It is said in the opinion of the Court of Appeals (Record, pages 846-847):

> "While no isolated fact, circumstance or presumption in the case and no particular inference

may be sufficient to establish Sinclair's connection with the receipt of bonds by Fall or Everhart, yet taking the entire record of what was done, and all the inferences properly to be drawn therefrom, the fact is sufficiently established that the bonds in the possession of Everhart and used in part for Secretary's Fall's benefit were received by Everhart either from Sinclair or the Continental Trading Company, Ltd. That Company, we have pointed out, is shown to have been the agent of Sinclair, Blackmer, O'Neil and Stewart. * * * The reasonable, proper and natural inferences and presumptions from the accrual of condemnatory incidents appearing in this record supply the so-called missing links in the testimony and satisfy us of Sinclair's connection with the Continental Trading Company, Ltd., and with the acquisition of the Government Liberty Bonds by Everhart and Secretary Fall. **A trail of deceit, falsehood, subterfuge, bad faith and corruption, at times indistinct, but nevertheless discernable, runs through the transactions incident to and surrounding the making of this lease. It should not receive the approval of the Courts.**"

From all these circumstances, **including the way the lease and contract were negotiated and the silence and evasiveness of witnesses**, the Court of Appeals had no difficulty in inferring the bonds came from Sinclair. That was not building one presumption upon another. It was making a single inference from many proven circumstances all pointing one way.

Furthermore, it has been held by the Eighth Circuit Court of Appeals that an inference from even disconnected circumstances is not building one presumption upon another. *Cooper vs. United States* (1925), 9 Fed. (2d) 216.

Special Counsel firmly believe the inference of the

Court of Appeals as to bribery was warranted by the evidence. It is contended by counsel for Petitioners, however, that part of the evidence of bribery was inadmissible. The admissibility of such evidence is considered presently. However, the conclusion of the Court of Appeals that there was fraud and conspiracy to defraud, was based upon all the facts we have related. Therefore, since the Petitioners assign no error based upon other proof of fraud and conspiracy to defraud relied upon by the Court of Appeals and proven by evidence in the record, Petitioners are not entitled to a review of the other evidence of fraud, and such fraud being therefore conceded so far as the present appeal is concerned, the question of bribery becomes moot.

For the reasons just stated it is immaterial whether the evidence relied upon to identify the bonds was admissible. However we will point out briefly why the Court of Appeals correctly held it was admissible. The evidence objected to and stricken from the record by the trial court was entries made in regular course of business in the books of New York banks and bond houses and Colorado, New Mexico and Texas banks and other corporations or business houses as to the identity, source and disposition of the bribe bonds. The trustworthiness of practically all of the entries was verified by the entrants or by officers having supervision of the books. As the trial court and the Court of Appeals held, only a small part, if any, of the evidence was hearsay. However, the trial court held all of it was *res inter alios acta* under an old decision of the Eighth Circuit Court of Appeals, *Commissioners vs. Keene, etc., Bank*, (1901), 108 Fed. 505. That court in the instant suit held the evidence was

not *res inter alios acta*, and if necessary it must be concluded reversed the decision upon which the trial court relied, and followed the weight of authority. It was not *res inter alios acta* because it was the most direct evidence possible of a collateral fact at issue. Direct evidence of a collateral fact at issue is never *res inter alios acta*. This evidence is not within the prohibition of the Commissioners vs. Keene Bank case.

It must be concluded upon the questions of fraud and conspiracy to defraud that the assignments of error of the Petitioners touch but a single among the many grounds relied upon by the Court of Appeals, and that as to the ground touched by the assignments of error the Court of Appeals made no mistake, drew no inference from any other inference or rebuttable presumption and applied the rules of law contended for by counsel for Petitioners, pages 59 to 64 of their brief. There is, therefore, no reason for this Court to review the evidence.

B. Was there authority of law to make the said lease and the said supplemental agreement and were they made in compliance with law?

From what has been said it sufficiently appears that the lease and contract involved in this suit were really made in behalf of the United States by the Secretary of the Interior; that they involved the acquisition by the United States of fuel depots and supplies and equipment; that such acquisition was without express direction of Congress and without competitive bidding; and that they diverted proceeds of the sale of United States property away from the Treasury.

Whether the Act of June 4, 1920, authorized such contracts made in such a way is the same question that

is now before this Court in the said Pan American Petroleum and Transport Company appeal. It was so stated by the Court of Appeals in its opinion (Record, page 816), "With great respect for the ability and learning of that distinguished Court (9th Circuit Court of Appeals), we find ourselves unable to arrive at the same conclusion as to this lease and contract. That case is now in the Supreme Court of the United States and **this legal question** will there be settled."

The conclusion of the Court of Appeals on this branch of the case was favorable to Petitioners and against the theory of Respondent, yet Petitioners assign error (Fourth Assignment, Petitioners' brief p. 31) to a refinement in the Court's reasoning toward the conclusion. The ultimate conclusion makes the refinement hypothetical and moot.

Any public policy requiring the determination of this question will be fully satisfied by the decision of this Court in said Pan American Petroleum and Transport Company appeal. Thereafter there will be no conflict between decisions of the two Circuit Courts of Appeal requiring determination by this Court in the interest of uniformity. *Magnum Co. v. Coty*, (*1932*), 262 U. S. 159, p. 163. No right of the Petitioners requires consideration of that question unless this Court also desires to go into the questions of fraud and conspiracy.

C. Must the Petitioners cease to trespass upon Teapot Dome and account for all petroleum products taken therefrom without credit for their expenditures?

Mammoth Oil Company is a *mala fide* trespasser because it is a creature of Sinclair who was guilty of

fraud and one of the conspirators for the fraudulent procurement of the lease and contract. The Sinclair Pipe Line Company and the Sinclair Crude Oil Purchasing Company are also constructively *mala fide* trespassers and are chargeable with notice of the fraud practiced by Sinclair and his Mammoth Oil Company, their assignor, in procuring the said lease and contract. Sinclair was Chairman of the Board of Directors of the Sinclair Consolidated Oil Corporation, its largest stockholder and appointed its officers including his brother as President (testimony of Stanford and Minutes of a meeting of the Board of Directors of Sinclair Consolidated Oil Company, September 13, 1922; R. 551-2; opinion of Cravath, Henderson, Leffingwell and de Gersdorff, attorneys for Sinclair Consolidated Oil Corporation, R. 560, all being evidence offered by Petitioners). The Sinclair Pipe Line Company and the Sinclair Crude Oil Purchasing Company were each owned one-half by Sinclair Consolidated Oil Corporation and one-half by Standard Oil Company of Indiana (R. 676, 559, 457). Sinclair was a director of and controlled the Sinclair Crude Oil Purchasing Company as appears from his and its part in the Humphreys-Continental Trading Company transaction (R. 448). Considering the way the consent of Fall to the assignment to Sinclair Pipe Line Company was negotiated by Sinclair and that it was subsidiary of Sinclair Consolidated Oil Corporation it is fair to assume that Sinclair was also a director of and in control of Sinclair Pipe Line Company.

Since the decision of this Court in the case of *Pine River Logging Co. vs. United States* (*1902*), 186 U. S. 279, the law has been that a *mala fide* trespasser upon the public domain must account for the full market

value of the minerals extracted therefrom and is never reimbursed for his costs of extraction thereof or for his permanent improvements. This very question of law was raised in the Pan American case, was there settled in favor of the Government, and will be again considered in the pending appeal of the Pan American Petroleum & Transport Company and the Pan American Petroleum Company.

Even if it be found that the Sinclair Crude Oil Purchasing Company and the Sinclair Pipe Line Company are not chargeable with notice of the fraud and conspiracy to defraud practiced by Sinclair and his Mammoth Oil Company in the procurement of the instant lease, still they would remain trespassers and would have to cease trespassing since they derive their rights under a lease voidable for fraud and now so avoided by decree of court. In such event they cannot demand that the owner of the property upon which they are trespassing should reimburse them for their improvements as a condition precedent for their ceasing to trespass upon the public domain. They are entitled to remove their tools and other movable fixtures and improvements. The order of the Court of Appeals does not preclude them from applying to the trial court for leave to remove such of their property as has not become permanently affixed to the realty. The *mala fides* of the Mammoth Oil Company being established, it must account for the full value of the oil and other petroleum products of the Reserve, and may not claim reimbursement for its cost of extraction or for its permanent improvements.

III. CONCLUSION.

Petitioners finally claim their cause is of much public importance because it involves charges of bribery of a Cabinet officer and a preservation of the rules of evidence that this Court should review it on its merits (Petition, pp. 23, 24). What has been said *supra* shows that the decision of the Court of Appeals preserves the rules of evidence in accordance with the well settled weight of authority. The interest of the public in the charges of bribery against the Cabinet officer will be fully served in his trial and the trial of Mr. Sinclair under pending indictments.

For the foregoing reasons it is respectfully submitted none of the grounds set forth in the rules of this Court or its decisions for the granting of writs of certiorari exist in this cause and it is respectfully suggested that the petition should be dismissed.

Respectfully submitted,

ATLEE POMERENE,
OWEN J. ROBERTS,
Special Counsel.

We acknowledge receipt of copies of the foregoing brief on December ——, 1926.

Solicitors for Mammoth Oil Company.

Solicitors for Sinclair Crude Oil Company and Sinclair Pipe Line Company.

Office Supreme Court, U.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 719.

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY and SINCLAIR PIPE LINE COMPANY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF ON BEHALF OF THE UNITED STATES.

ATLEE POMERENE,
OWEN J. ROBERTS,
Special Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926. No. 719.

Mammoth Oil Company, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, Appellants,

vs.

United States of America, Appellee.

BRIEF ON BEHALF OF THE UNITED STATES.

I. APPELLEE'S STATEMENT OF THE CASE.

A. HISTORY OF THE LITIGATION.

1. The pleadings.

The bill prays for cancellation of a lease dated April 7, 1922, and a contract dated February 9, 1923, between the United States and Mammoth Oil Company; for temporary and permanent injunctions against each of the appellants; for a receivership and for an accounting.

The bill alleges (1) fraud tainting the lease and contract, (2) a fraudulent conspiracy to secure the lease and contract, (3) illegality and lack of authority and (4) the negotiation and execution of the lease and contract in a manner not authorized by law.

By the lease of April 7, 1922, the Government agreed to lease to Mammoth the exclusive right to extract oil and gas in all of Naval Petroleum Reserve No. 3, containing approximately 9,321 acres, for a period of twenty years and so long thereafter as oil or gas is produced in paying quantities, at stipulated royalties; and to sell to Mammoth the royalty oil, gas and casing-head gasoline produced from said reserve.

In consideration therefor Mammoth agreed to drill not less than twenty test wells at designated points and upon the completion of the test wells to continue in good faith to use due diligence to develop fully the entire area. In event of reaching a certain production Mammoth agreed to build a pipe line of at least 25,000 barrels daily capacity, to connect with a pipe line reaching Chicago.

In payment for the royalty oil and in lieu of delivery in kind Mammoth agreed to establish an oil credit in favor of the Government evidenced by oil certificates showing the amount of the royalty oil, gas and casing-head gasoline and the value thereof. Mammoth agreed if and when requested by the Government to construct steel storage tankage at Atlantic Coast points to be designated by the Government, up to but not in excess of such capacity as shall be

estimated to be necessary for the storage of the quantity of fuel oil refined from the royalty oil of the Government. The oil certificates were to be redeemed by Mammoth either in liquidation of amounts expended in the construction of such storage or by the delivery of fuel oil and other petroleum products for use by the Navy, or, under certain conditions, partly in cash.

By the supplemental contract of February 9, 1923, Mammoth agreed to construct storage tankage and facilities for fuel oil and other petroleum products and to fill such tankage with fuel oil and petroleum products. The storage was to be located at Portsmouth, N. H., Melville, R. I., Boston Harbor, Mass., and Yorktown, Va. Construction at Portsmouth was to commence as soon as plans and specifications could be furnished. Oil certificates were to be used to pay for the storage, fuel oil and other petroleum products. On completion of the projects designated, additional projects were to be undertaken.

The answer of Mammoth denied the several allegations of fraud, conspiracy and illegality and averred the expenditure in good faith of more than $6,000,000 in operations under the lease and contract. The separate answers of the Purchasing Company and Pipe Line Company also denied the allegations of fraud, conspiracy and illegality, and averred that they had placed certain improvements on the Reserve under grants from Mammoth, obtained for value and in good faith.

2. Findings and decree of the District Court.

The Trial Judge found that Secretary Denby retained and directed the executive administration and policies relating to the Reserves; that Fall and Sinclair did not conspire to defraud the United States; that there was no fraud connected with the negotiation or execution of the lease and supplemental contract; that the negotiation of the lease was not privately concluded by Fall and Sinclair; that Denby actively participated in the negotiation of the lease and contract and executed the same after mature deliberation and with full knowledge of their terms; that the negotiation and execution of the lease and contract was not attended by undue or unlawful secrecy; and that no responsible and desirous bidder was denied an opportunity to bid.

He concluded that the Act of June 4, 1920, was a special act, and that all things to be done thereunder were taken out of the operation of all general laws; that the Act authorized the negotiation and execution of the lease and supplemental contract without advertisement and competitive bidding; that the lease and contract were legal; that the "oil certificates," whether redeemed for storage, fuel oil or cash, were authorized by the Act; and that the disposition of the royalty crude oil for storage was not a sale but an exchange, and was fully authorized by the Act. The establishment of fuel depots without the prior consent and approval of the Congress was apparently not considered. The Trial Judge accordingly entered a decree dismissing the bill.

3. Findings and decree of the Court of Appeals.

The Court of Appeals interpreted the Act of June 4, 1920, as permitting the Secretary of the Navy in his discretion to make such a lease and such a contract as were made in this case. It held that neither the lease nor the contract violates any law requiring advertisement and competitive bidding, the covering of the proceeds from the sale of United States property into the Treasury of the United States or the locating of fuel depots. To this extent the Court of Appeals affirmed the decision of the Trial Judge.

But the Court of Appeals concluded that fraud and conspiracy to defraud were proved. It found that Fall dominated the negotiation of the lease and contract (R. 819; 820; 828); that the lease was not necessary as a protection against drainage (R. 822); that the existence of invalid placer mining claims was manipulated to the disadvantage of competition (R. 822; 823); that undue secrecy surrounded the negotiation and execution of the lease (R. 824-7; 828; 847); that such secrecy was not justified by military expediency (R. 825); that legal advice was willfully disregarded (R. 827); that Sinclair bribed Fall with $230,500 worth of Liberty Bonds (R. 846-7); that the Trial Court erred in striking from the record certain testimony pertaining to the Liberty Bond transaction (R. 847-9); that the silence of Sinclair and other logical witnesses for the defense was significant (R. 836; 841-2-3; 845-6); that it was unnecessary for the United States to show pecuniary damage

(R. 817); that the lease and contract are not severable or divisible (R. 810; 815); and that the Purchasing Company and the Pipe Line Company were chargeable with notice of the fraud and the conspiracy to defraud at the time they acquired their rights under the Mammoth lease and contract (R. 850).

For these reasons the Court of Appeals concluded that the lease and contract should be cancelled, the appellants should be enjoined from further trespassing upon the lands and that Mammoth should account for the value of all oil and other petroleum products taken under said lease as a *mala fide* trespasser without credit for moneys expended under the lease and supplemental contract (R. 851).

B. THE ISSUES RAISED UNDER THE PLEADINGS AND EVIDENCE.

1. Fraud, not inadequacy of consideration, was the important fact issue.

Appellants seek to limit the issues of fact under the charge of fraud and conspiracy made in the bill to the question of whether the lease was made for an inadequate and improper consideration (Mammoth Brief, p. 11). They state that if it was lawful for Fall to carry on the negotiations, to negotiate without publicity or competitive bidding, to conclude the negotiations without an opinion from the Attorney General as to the legality of the lease, to make the quieting of alleged placer mining claims a condition precedent to the lease, to negotiate the lease and

contract without the participation of the Secretary of the Navy, and if the Government failed to prove that the lease was granted upon an improper and inadequate consideration, then the charge of fraud and conspiracy must fail (Mammoth Brief, pp. 10, 11).

This attempt to limit the issues is not justified by the pleadings and the evidence.

The bill (par. 18, R. 7) recites a conspiracy by Fall and Sinclair to defraud the United States by the execution of the lease of April 7, 1922. It avers (par. 20, R. 7) private and secret negotiations between Fall and Sinclair. It avers (par. 21, R. 8) the failure to have competition. It avers (par. 23, R. 8) Fall's discouragement of other ready and willing bidders and that Sinclair and Mammoth were privy to this. It avers (par. 25, R. 9) that Fall secretly and fraudulently arranged with Sinclair to get quit-claims of valueless rights and made the obtaining thereof a condition of granting the lease in fraud of the United States. It avers (par. 26, R. 9) other private and fraudulent arrangements by Fall and Sinclair. It avers (par. 27, R. 10) a fraudulent suppression of facts by Fall. It avers (par. 28, R. 10) fraudulent conduct on the part of Sinclair and Fall to violate the law to prefer Mammoth, to give valuable rights to Mammoth and to defraud the United States by the lease. It avers (par. 29, R. 10) that the agreements involved are fraudulent as against the United States.

It is wholly untrue to say, as appellants do at pages 11, 49, 50 and 106 of the Mammoth Brief,

that the issues resolved themselves on the bill and answer only and solely into a question whether the consideration given by Sinclair was inadequate. It is fundamental that evidentiary facts need not be averred in a bill of complaint. Throughout the cause the Government has based its claims upon fraud. Inadequacy of consideration has played little or no part in the view of the Government, because it is of no moment in a case based on frauds such as were here proved. (*Pan American Pet. & Trans. Co. et al* vs. *United States.*)

Nor is it true that the case went off merely on an issue of bribery. Both of the courts below recognized that the issue was fraud and that the Government's proofs, including the evidence of bribery, were directed to that issue. The charges of fraud and conspiracy are summarized in the opinion of the Trial Court (R. 226-228).

That the Court of Appeals so understood the Government's contention and affirmatively passed upon it is shown by the fact that that court paid no attention to the alleged inadequacy of consideration; and before it took up any question of bribery of Fall by Sinclair, carefully examined all the badges of fraud relied upon by the Government and found their existence. Thus it dealt with the facts showing these matters from pages 798 to 811 inclusive of the record. By its statement and conclusions it shows beyond peradventure that fraud upon the Government was the issue in this case and that in its judgment such fraud was proved.

Thus at R. 817 the court said:

"The burden is on the party alleging fraud to show the same."

And again:

"While the law presumes the good faith of business transactions, fraud may be the only legitimate and proper inference that can be drawn from the circumstances disclosed."

And at R. 818:

"Nothing is so essential to the perpetuity of representative government as fidelity of public officials. That the highest degree of fairness and honesty is required of them goes without saying, and the same standards apply to those with whom they deal."

And again R. 818:

"In this case appellant claims that the facts and circumstances shown in evidence are sufficient to raise controlling inferences of fraud and bribery, and are inconsistent with any honesty of purpose on the part of Fall and Sinclair. The Trial Court made findings of fact in this case, one of which is that there was no fraud connected with the negotiation or execution of the lease or the supplemental agreement."

And again at R. 821:

"The activities of the Secretary of the Interior in taking care of affairs entrusted by Congress to the Secretary of the Navy were decidedly unusual and indicated a deep interest therein."

Again at R. 822:

> "The drainage question is important only as bearing on the good faith of the lease. It offered an apparently valid reason for leasing the entire Reserve, and was utilized in accomplishing that result."

Again at R. 823:

> "Of course, making the acquisition of these claims a prerequisite of any lease, when Sinclair either had them or was in a preferred position to secure them, was a fraud as to other bidders, and in its effect removed them from the status of qualified applicants. Other companies desiring to bid and obtain leases on Teapot Dome were not placed on the same footing with Sinclair."

Again at R. 823, referring to Fall's evasive statements to many prospective bidders:

> "There was an utter lack of good faith in the matter."

Again at R. 825:

> "For some reason deceit was practiced as to Members of Congress, both by the Navy and the Interior Departments."

Again, R. 826-7 (referring to the letters written to members of Congress and others by the Interior and Navy Departments):

> "They all show an absence of frankness and a studied attempt to deceive, and keep information from Members of Congress."

Again, R. 828:

> "In the transaction of public business there is no necessity for scheming, deception or double dealing, nor unless in well recognized, exceptional matters,—for secrecy."

And again, R. 828:

> "Whether these valuable rights were obtained by bribery or other corruption it is clear that the lease was secured for Sinclair by the influence, aggressiveness and ability exercised by Secretary Fall in his behalf and that the entire situation was so dominated and manipulated by Secretary Fall as to make certain this result."

Again, R. 847:

> "A trail of deceit, falsehood, subterfuge, bad faith and corruption, at times indistinct, but nevertheless discernable, runs through the transactions incident to and surrounding the making of this lease. It should not receive the approval of the Courts. Our conclusion is that the Government has sustained its claim that the lease and contract were procured by fraud and corruption, and that they should be cancelled."

The foregoing excerpts from the opinion of the Court of Appeals demonstrate clearly that fraud was the issue upon which the case was tried and the lease and contract set aside. All of the other elements of fraud were examined by the court and commented upon by the court before it took up the evidence as to bribery. And the evidence as to bribery is treated

as but one element or item in the many significant transactions which spell favoritism, secrecy and fraud.

2. The Pan American decision rules the legal issues, because the lease here was not a conservation measure, but was made to obtain unauthorized fuel depots without appropriation.

By a gloss upon the facts appellants in their statement of the case seek to give a wholly inaccurate picture of the transaction attacked in this case.

Appellants seek by a complete shift of position from that taken in the courts below to demonstrate that the lease and contract in this case were made from a different motive than were those in the Pan American case; that the lease in this case was purely a conservation measure and that the underlying purpose was not, as it was in the Pan American case, to use royalty oil as a consideration for the erection of fuel depots to an amount far in excess of that appropriated for storage by the Congress and at places not authorized by law.

We cannot let this new position of appellants pass unchallenged and shall answer it *in limine*.

In the Pan American case the Government was in receipt of royalty oils from leases made under the Leasing Act of February 25, 1920, from Naval Petroleum Reserves Nos. 1 and 2. The first contract in that case was a contract for the use of these royalty oils as a consideration for the erection and filling of the Pearl Harbor project. The ambitious fuel depot

program of Admiral Robison required more royalty oil to be used as such consideration than the existing leases afforded, and as a result the leases were made to supply that royalty oil to be used in lieu of cash for the building program.

When the exploitation of Teapot Dome was taken up it was determined to make the royalty oil from Teapot Dome supply that portion of the fuel depot program which was applicable to the Atlantic Coast. At that time the Government was, of course, in receipt of no royalty oil from Teapot Dome because no leases had been made on it.

The program was, therefore, reversed to this extent:—that the lease was made calling for the extraction of all the oil in Teapot Dome and it was provided by that lease that the Government bargained and sold any royalty oil arising from the lease to the lessee against which the lessee should set up a continuing credit to the Government evidenced by so-called "oil certificates" which oil certificates it was intended the Government should use as currency or consideration to reimburse the lessee for its expenditures in the building of fuel depots and the filling of the same with fuel oil.

No evasion, no dressing up of the facts to suit a last minute theory, can becloud these facts. They stand out throughout the proofs in the cause. It is obvious that appellants have reformed their whole theory of the case in order to evade and escape the effect of the decision of this Court in *Pan American Pet. & Trans. Co. et al.* vs. *United States.* Atten-

tion to the facts in this case will show that this effort of appellants must fail.

We must quote the two principal witnesses of the appellants in this cause, both of them employees of the United States. At page 611 of the record, Admiral Robison testifies, *inter alia*, as follows:

> "I know that it was within the province of Congress to establish fuel stations. * * * I decided not to go to Congress for authority to do that. The fuel stations to be established under the Pan American contract of April 25th, or under the Mammoth Oil Company contract of April 7th, were to be complete reserve fuel stations. They are what are known in appropriations as fuel depots. The question of the establishment of these fuel depots under these contracts was never submitted to Congress until the contracts had been entered into, nor ever approved by Congress through an act."

And again (R. 611):

> "In a letter dated 8th December I stated that our arrangements with the California Naval Reserve for the exchange of royalty oil for fuel oil in storage would take care of the Pacific situation—Pearl Harbor. I had in mind that some such provision ought to be made for the Atlantic Coast as well. The only available place from which we could get a supply for the Atlantic Coast was Teapot Dome, or the $500,000,—not that the $500,000 would take care of the Atlantic Coast reserve oil, but it would help and we subsequently did use it for the Atlantic situation.

"I did not discuss with Secretary Fall, prior to January 1, 1922, how we were going to provide storage facilities for the Atlantic. I did discuss the Atlantic situation with him at the interview I had with him late in January, 1922, in general terms. I did say to him then that the lease of Teapot Dome would give similar advantages on the Atlantic Coast."

The same witness, at page 636 of the record, said:

"I was familiar with the Act of Congress of August 25, 1914 (38 Stat. 708) that if royalty oil be sold the money should go into a fund which in the discretion of Congress would be appropriated for the needs of the Navy as Congress saw fit. I was familiar with the Act of February 25, 1920, known as the Leasing Act. I was familiar with the fact that under that act the proceeds from royalty oil were to be put into the Treasury of the United States as miscellaneous receipts. My study of the situation therefore showed me that if naval reserve oils were sold, the Navy could not, without the consent of Congress, get the money which would be realized therefrom. I discussed that fact with Mr. Denby, with Mr. Fall and with Mr. Sinclair. The intent of my remarks to all of them was that in order to prevent the money going into the Treasury, a plan must be worked out whereby royalty oil should be given as a consideration for the storage of fuel oil in tanks, and the building of naval depots therefor. It was always the intention of the Navy Department and of the Interior Department, when the contracts were being discussed, and being made, to use all of

the oil certificates under this Mammoth Oil contract for fuel and other petroleum products in tanks to be built and to constitute naval fuel reserve depots.

"Referring to my memorandum of May 11, 1922, which is a memorandum I made for the Secretary of the Navy on the subject of oil certificates, and referring to paragraph 7 of that memorandum in which I say: '7. No royalty oil has yet accrued through drilling in Naval Reserve No. 3 but when such occurs, it is to be used toward construction and filling of further tankage as a reserve for future use by the Navy and at such points on the Gulf and Atlantic Coast as designated by the Navy Department in fulfilment of the requirements of the National Defense.' I will state, it was the full intent as expressed by paragraph 7 of that memorandum, that all royalty oil accruing from No. 3 Reserve should be used in exchange for fuel oil to be placed in tanks to be constructed as part of the naval reserve depots at various points, and that royalty oil should be used as consideration for all of these things.

"Referring to the Atlantic Ocean and Gulf stations under the Navy's war plans, and meaning thereby construction facilities alone, as distinguished from the oil that was to be filled into the storage facilities, I should say that at least $25,000,000 would be a fair figure of the approximate cost; that on the Pacific for construction as distinguished from oil to be filled into the tanks would be somewhat less, perhaps $15,000,000. For the whole project on both coasts, including the oil and petroleum products that were

to be put into the stations when constructed, the plans provided for a cost of a little in excess of $100,000,000, based upon the prices current for fuel oil at the time the estimate was made."

Bain, Director of the Bureau of Mines, said (R. 700-701):

"The method of exchange of royalty oil for storage under the provisions of the Mammoth lease is in effect the same method of exchange as in the Pan American contract, although worked out in one case by a certificate and in the other case by a credit on the books. I had in mind in my original objection that the same logical objection would apply to oil running from both the California and the Wyoming reserves unless the legal objection was as to the mere way of doing it. In the case of the California reserve the contractor agreed to construct and to credit against the cost of construction the royalty oil delivered to him. The contract of April 7 was a lease, that (is) my interpretation of it, under which the Navy leased to the Mammoth Oil Company the ground and received certain royalties and sold the royalty oil and received certain other things, including an option under which they might require construction. Under that lease the operator gave certain certificates or receipts as you might call them for the royalty oil received; and under that contract, as a matter of operation, they went ahead for a series of months before the Navy exercised its option to require construction. The purpose of the lease was to store fuel oil in tanks to be constructed when enough royalty oil had run for that pur-

pose; to store the fuel oil received in exchange for the royalty oil in tanks to be constructed by the operator. Under the Pan American contract of April 25th, the royalty oil was already running to the United States from certain existing leases and that royalty oil was to be used in exchange for fuel oil and construction of tanks."

Again, Admiral Robison in his testimony as to his talk with Denby in late January, 1922, concerning the leasing of the whole Reserve as contrasted with mere protective leasing, testifies as follows (R. 584):

> "The reason for the development of No. 3 Reserve as a whole was because of my insistence upon the necessity of a pipe line in order that the Reserve in that portion of our country could be made military reserves, and the creation of a pipe line was a matter of so large an investment of capital as to require more than a partial development of a small section would involve. * * * He (meaning Denby) said he did not much like to make any unnecessary development. I told him that the unnecessary development was a matter that depended upon a big question, that the complete protection of our property could be secured with certainty only by complete development. I told him that probably with a less development the drainage of the property might be secured against, but if we protected the property against drainage without securing a pipe line we would not have military availability. He agreed on those grounds, connected directly or indirectly with the strengthening of the national defense, to undertake the development of the complete Reserve."

The same witness (R. 589) testifies that at his first meeting with Sinclair in January, 1922, he set forth the Navy's ideas with regard to the Reserves as follows:

> "That the Reserve should be developed as a whole, that a pipe line should be constructed of adequate capacity to care for the production of the field; that the naval proceeds from royalties should be directed towards the erection and filling of specified storage facilities along the Atlantic Coast; that the exchange be operated without the use of cash; that the oil from the wells should be used in exchange for the accomplishment, for naval account, of the facilities to be created. I mean the royalty oil."

Again, referring to the same conversation, the same witness, Robison, says (R. 616):

> "I told Mr. Sinclair when I met him that royalties were not to be taken in cash; that they could not pay them in cash without their going into the Treasury, and they would not be of any use to us. I think it would have been a better proposition to get our royalties in cash than to trade them for building for storage, but it would not have been legal."

Robison's understanding of the primary objects to be obtained from the leasing of the Teapot Dome is further revealed by his statement anent the Beaty proposition (R. 643):

> "* * * I know it did not provide the various things that we called necessary, such as pipe lines, construction and filling of storage

facilities along the Atlantic Coast, without the exchange of crude oil at any time into cash. Those were the three primary features necessary."

In seeking to justify the leasing of the entire Teapot Dome upon the ground, *inter alia*, of the existence of a pressing national emergency, Robison stated (R. 646):

"* * * As to whether I would have decided that the Dome ought to have been leased immediately if there had been no national emergency I may say national emergencies are matters of definition, they are also matters of law, I suppose, but to me there is a genuine national emergency unless we have a defense that is adequate at this time to protect us against any combination of foreign powers. It was greatly accentuated of course by the Japanese situation; but to me there was a general national need that was, at this time, made grave, that is all. I therefore did not take time to examine the question of drainage as I might have done had there been no emergency in the matter. In other words, with information that the drainage situation was threatening, with the knowledge I had of a genuine emergency, I decided to take no time to consider the drainage separately but to go on with the proposition and take no chance with the national security. That is exactly the basis of my decision and I so told Secretary Fall. Prior to the time, however, that I became aware of the probability of drainage in Teapot Dome, I do not think that we were justified in opening up that Reserve, but it took a combination of circumstances to justify our actions as a whole."

The preambles of the lease of April 7, 1922 (Ex. B, R. 14) fully confirm the Government's contention that the purpose of the making of the lease was to get fuel depots built, to get a pipe line built and to get certain other illusory considerations which Fall always boasted about, such as the raising of the market price of Government oil on adjoining territory (the Salt Creek field).

The first preamble asserts that the Government is charged with the duty of "securing and storing a supply of fuel oil for naval purposes, and is desirous of acquiring suitable storage for such fuel oil at points easily accessible to the United States Navy." The second preamble refers to the "risk" of the loss of supply by a reduction of gas pressure through drilling on neighboring territory. The third preamble refers to the desire of the Government to raise the price of Salt Creek royalty oils. The fourth preamble recites that the Government is desirous of "exchanging" crude royalty oil from Naval Petroleum Reserve No. 3 for fuel oil "and is desirous of securing adequate storage facilities for the storing of such fuel oil as is received by it in exchange for said crude oil over and above the requirements for use of the United States Navy."

The above preambles confessedly were drawn by Fall. We therefore have the definite declarations of Robison, Bain and Fall, the three people concerned most nearly in the making of the lease, as to its main, prime and cardinal purpose. We shall hereinafter, at pages 173-81 of this brief, demonstrate

by an analysis of the lease itself that it is capable of no construction except that it was made for the purpose of obtaining fuel depots with credits established by the sale of royalty oil to the lessee.

It is too late for appellants to argue that the lease was made solely as a conservation measure. Concerning this the Court of Appeals said (R. 822):

> "It was not until the full scheme of development of the entire Reserve, with its attendant features, was suggested and became visualized, that these fears of drainage became acute. The drainage question is important only as bearing on the good faith of the lease. It offered an apparently valid reason for leasing the entire Reserve, and was utilized in accomplishing that result."

We shall not here deal at length with the alleged fear of drainage as a motive for making the lease. We deal with this fully (*infra* pp. 61-71). We content ourselves here merely with calling attention to the reversal of position on the part of appellants, brought about by the necessities of their case.

In the Trial Court appellants argued that the Act of June 4, 1920, made it mandatory for the Secretary of the Navy to develop the Reserve and that it was not necessary to show that drainage was taking place in order to authorize the making of the lease (Mammoth Trial Brief on the Facts, p. 43). The Trial Judge made no finding whatsoever on the subject of drainage or possible drainage of the Reserve. He contented himself with a few passing

comments on bits of testimony in the record which might indicate some drainage from neighboring drilling (R. 234; 236; 239).

In the Court of Appeals the appellants in their oral argument and in their printed brief again definitely took the position that the lease was justified by the Act of June 4, 1920, which was a command or mandate to the Secretary of the Navy to take all of the oil out of the ground. Thus at page 45 of that brief they say:

> "The defendant maintains that the Act of June 4, 1920, made it mandatory for the Secretary of the Navy to develop the Naval Petroleum Reserves by drilling wells in the oil sands, either by lease or otherwise."

They were able to persuade the Trial Court and the Court of Appeals, apart from the question of fraud, and upon the mere question of legal power, that the Act of June 4, 1920, authorized, nay commanded, the leasing of the whole Reserve. This was before this Court had spoken in the Pan American case and had definitely said that the Act of June 4, 1920, in no wise altered the policy of conservation of oil in the ground and authorized leasing only so far as the same might be necessary to preserve the underground oil from depletion.

C. THE LEASE IS ENTIRE AND INDIVISIBLE.

Throughout appellants' statement of the case it is argued that the lease of April 7, 1922, consists of

two agreements under one cover,—a primary and basic contract which is a lease, and a collateral agreement relating to the disposition of royalty oils. It is single and entire. It recites the considerations on both sides as single and entire. It sets off the Government's covenants against those of the lessee in each case as an entirety. Appellants further insist that this lease contained four "options" which the Government might exercise. They reverse those so-called options in their order of stating them from the order in which they appear in the lease and thus cause the wholly false impression that the Government might, if it chose, take nothing but cash for its royalty oil. This is absolutely incorrect. Under no conditions could the Government take all cash. We deal with the errors of statement of appellants in this regard hereinafter more fully at pages 184-6 of this brief, but we advert to the matter here lest it should seem that we concur in the appellants' statement of the facts.

D. THE TWO COURT RULE.

Appellants at various points in their statement of the case seek to give the impression that fact findings of the Trial Judge were concurred in by the Court of Appeals. (See pages 12, 13, 14, 19, 30 and 47 of the Mammoth Brief). Such is not the fact. On the contrary the District Court held, in brief, that there was not sufficient evidence to prove any fraud in the making of the lease and contract (R. 275).

On the other hand, the Court of Appeals, after

a review of the whole evidence, disagreed with every one of the fact conclusions of the Trial Court with respect to the probative force of the proofs, and held, with regard to the whole chain of incidents leading up to the making of the lease and contract, that they showed a complete trail of fraud on the part of Fall and collusion between him and Sinclair. After a very full discussion of all these incidents the court summarized its conclusions to this effect at page 847 of the record.

It is true, as the Court of Appeals held, and as the District Court indicated, that there is very little, if any, conflict of testimony. The case does not, therefore, present a difference of opinion between the two courts as to where the truth lies as between conflicting evidence and testimony, but as to what are the reasonable and proper deductions which the court should make from uncontradicted facts. (See the opinion of the Court of Appeals at R. 818).

II. ARGUMENT.

A. PRELIMINARY STATEMENT.

The argument of this appeal naturally divides itself into two main headings. We shall first address ourselves to the findings of fraud by the Court of Appeals. In this connection it will be necessary to any proper understanding of the case carefully to restate the facts and all of the facts in sequential and logical order. This appellants have wholly failed to do. Upon the basis of such statement we shall then comment upon the conclusions of the Court of Appeals and shall seek to demonstrate that it correctly found that the lease and contract were brought about by fraudulent misconduct on the part of Secretary Fall, who dominated the negotiations.

The second main division of this argument will address itself to answering appellants' contentions as to certain questions of law; and especially to the argument that the Act of June 4, 1920, authorized the making of the lease and contract under attack.

B. APPELLEE'S STATEMENT OF THE FACTS.

1. Origin and history of the Reserves.

We content ourselves with referring to the accurate and careful statement of this Court in its opinion in *Pan American Pet. & Trans. Co., et al.* vs. *United States*, for an outline of the origin and history of the Naval Petroleum Reserves, merely supplementing the same by stating that Naval Petroleum Reserve No. 3 in Wyoming was created by Executive

Order of President Wilson dated April 30, 1915 (Pl. Ex. 106, R. 431-2). The Reserve of course falls within the provisions of the Act of June 4, 1920, which is referred to and considered at length in this Court's opinion above mentioned.*

2. Secretary Fall takes full charge and control of Naval Petroleum Reserve matters.

After the execution of the Executive Order of May 31, 1921, referred to in this Court's opinion in the Pan American case, and not here repeated, Secretary Fall determined that he should have sole charge and control of the Naval Petroleum Reserves. On July 8, 1921, he wrote to E. L. Doheny a letter (Pl. Ex. 13, R. 313) in which he said (R. 313):

> "Thus my position is that of * * * a trustee for the Navy for the public lands upon which there is no private claim within the naval reserve."

He went on to say to Mr. Doheny:

> "There will be no possibility of any further conflict with Navy officials and this Department, as I have notified Secretary Denby that I should conduct the matters of naval leases under direction of the President, without calling any of his force in consultation unless I conferred with himself personally upon a matter of policy. **He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau of his depart-**

* For the Court's convenience the act is printed as an Appendix, p. 221, *infra*.

> **ment but only with himself and such consultation will be confined strictly and entirely to matters of general policy."**

This assumption of charge and control by Fall was confirmed in the letter of October 25, 1921 (Pl. Ex. 5; R. 281-3), in which Secretary Denby proposed to Fall (R. 282):

> "7. That **all leases and contracts,** except as provided in Paragraph 6, **will be arranged and consummated by the Interior Department,** copies of same being furnished to the Navy Department **as a matter of information and record only."**

This arrangement was ratified by Fall in his reply letter of October 30, 1921, to Denby (Pl. Ex. 6; R. 283).

3. Origin and development of fuel oil storage plan.

In the meantime, Fall had evolved the idea of using the Government's royalty crude oil as a medium for the purchase of storage facilities. This idea was first expressed in his letter of July 23, 1921, to Denby (Pl. Ex. 2; R. 278-9), in which Fall wrote (R. 279):

> "* * * I suggest the desirability of effecting an exchange of the crude oil received as royalty for an equivalent value of fuel oil, to be stored without expense to the United States by the other party to the exchange. Preferably the exchange should be not only of crude oil for fuel oil in storage, but for the tanks containing the Navy's stored oil. **In other words, my suggestion is that the crude oil be exchanged for tanks and fuel oil, the**

title to both to be vested in the Navy as a result of the exchange.

"If this plan meets with your approval, and you desire me to undertake to consummate the arrangement, I shall be glad to do so. In any event, I should like to hear from you on the subject as soon as possible."

On July 29, 1921, Denby replied that he was glad to acquiesce in Fall's suggestion and that such an arrangement would be of great benefit to the Navy (Pl. Ex. 3; R. 279-80). Almost immediately thereafter, Fall went to the Pacific Coast for the avowed purpose of conferring with some oil companies or oil men and working up some such idea or arrangement (R. 281, 669). He returned from the West in the middle of October, 1921 (R. 281).

After becoming Chief of the Bureau of Engineering on October 8, 1921, Robison studied the records of the Navy Department in relation to the Naval Petroleum Reserves and in the course of such examination came across Fall's letter of July 23, 1921 (R. 570, 574). Upon the return of Fall from the West, Robison, on or about October 20, 1921, discussed with him the exchange of royalty crude oil for fuel oil in storage and told him what he had in mind in regard to storage facilities (R. 602-4, 669). Fall expressed a doubt as to the legality of that proposition, **which involved the ultimate expenditure of a sum in excess of $100,000,000;** but Robison claims he convinced Fall that the plan was legal and Fall then agreed to go along with the storage policy (R. 604, 429, 637). Robison did not

disclose that such storage facilities would constitute an unauthorized establishment of fuel depots (R. 689), which he knew lay within the exclusive province of Congress (R. 611).

About that time Robison, realizing that Congress would undoubtedly make trouble, agreed with Fall to observe secrecy in order that Congress and the public might not know what was being done and thus avoid any trouble (R. 610, 619).

4. The investigation of the possibility of drainage of Teapot Dome.

At a conference in late October, 1921, Fall and Robison discussed with H. Foster Bain, Director of the Bureau of Mines, and A. W. Ambrose, Chief Petroleum Technologist, a report which Carroll H. Wegemann had recently submitted to the Bureau of Mines (R. 576, 664). This report stated that the saddle separating the Teapot Dome structure proper from the Salt Creek structure had been found to be farther south than had been originally thought. Because of this alleged new location of the saddle, Wegemann expressed the belief that drainage of the Reserve was taking place and recommended its development (Def. Ex. 6; R. 320-23). **All agreed, however, that the Wegemann report created merely a suspicion of drainage, which would necessitate investigation but not action** (R. 576). Whereupon Fall instructed the Bureau of Mines to investigate the possibility of drainage of the Reserve (R. 576, 665) and also re-

quested a like examination to be made by the United States Geological Survey (R. 316).

K. C. Heald, an experienced geologist then in the employ of the United States Geological Survey, was selected to visit and examine the Teapot Dome; and upon his return to Washington, in late November, 1921, he reported orally and in writing to the Director of the Geological Survey, George Otis Smith, and with George Otis Smith reported orally and in writing to Fall (R. 316-18). The advice of Director Smith to Fall was that in Heald's opinion there was no imminent danger, if any danger, of the drainage of Teapot Dome proper by reason of wells which might be put down in the Salt Creek field (R. 316). The conclusion of Heald's report was, "No further leasing should be done. The lands last leased (in the Salt Creek field) will permit some slight drainage of unleased land within the Reserve, but this is unavoidable if an effective barrier is to be maintained between the producing wells and the underground storage." The report further says: "That part of the Reserve which it (drainage) will affect must be regarded as one of its poorest portions." (R. 318.)

Thereafter the Geological Survey was never consulted (R. 317, 319, 671, 705). Bain and Ambrose of the Bureau of Mines also investigated the possibility of drainage of the Reserve, but did not express their views thereon until a conference in late January, 1922 (R. 665, 703).

Robison testified that he too investigated the possibility of drainage of the Reserve; that the reports

from the geologists indicated it was not being drained by the Salt Creek field; and that he thought the Reserve was pretty secure (R. 574-5). He further testified that paragraph 9 of the letter of October 25, 1921, which he formulated for the signature of the Secretary of the Navy, distinctly forbade the development of the Teapot Dome reserve (R. 574-5).

5. Fall personally consummates the leasing of Naval Petroleum Reserve No. 3.

In January, 1922, Fall instructed Finney and Bain to look after the negotiations for the Pearl Harbor storage project and informed them that he, Fall, was going to deal with Reserve No. 3 himself (R. 284). Finney and Bain took no active part in the negotiations with Sinclair for the leasing of the Teapot Dome (R. 284-5, 666). **Barring one conference between Sinclair and Robison in late January, 1922** (R. 589, 607, 612), **all negotiations were conducted solely by Fall on behalf of the Government** (R. 326-7, 615). Denby never attended any conference with representatives of the Mammoth Oil Company in this matter (R. 627).

(a) *Sinclair's New Year's visit with Fall at Three Rivers.*

On December 31, 1921, Sinclair and Zevely, his counsel, arrived at Three Rivers, New Mexico, to consult with Fall about a business matter (R. 323, 672). Fall and Sinclair took advantage of this

occasion to discuss the leasing of Reserve No. 3 (R. 323, 609); but this discussion was not in the presence of Bain, who had arrived at Three Rivers on the same train with Sinclair (R. 672).

Immediately thereafter, the General Land Office was ordered by Fall's administrative secretary to prepare a report upon the Pioneer and Belgo placer mining claims, which report was to be made up as soon as possible so that Fall might have it upon his return from New Mexico (R. 285, 329, 333).

These were certain placer mining claims, title to which had been acquired by two companies known colloquially as the Pioneer and Belgo Companies. They covered a large amount of territory in Reserve No. 3. After the Leasing Act, the holders of these claims had applied for leases under the Leasing Act of February 25, 1920, and their applications had been denied by Secretary Payne, and this denial had on rehearing been affirmed by Assistant Secretary Finney. In desperation they had filed a petition for the exercise of supervisory powers by the Secretary of the Interior, and this had been lying undisposed of for some time.

The requested report was submitted on January 12, 1922, and confirmed an earlier report of Glenn B. Morgan to the effect that there were no valid placer mining claims on Reserve No. 3 (Pl. Ex. 21; R. 329-32; 333).

Appellants state (Mammoth Brief, p. 128) that pursuant to the conference in late October, 1921, Fall instituted an inquiry as to pending applica-

tions for leases on Reserve No. 3. This is incorrect. Fall instituted no inquiry until after Sinclair inquired about a lease of the Teapot Dome on his visit to Three Rivers December 31, 1921. Immediately after that visit Fall was most urgent to get a report immediately and before his return to Washington.

Fall arrived in Washington on January 27, 1922 (Pl. Exs. 10, 24 and 25; R. 298, 342). Soon after his arrival, he conferred with Bain, Ambrose and Robison in the office of the Secretary of the Interior (R. 583, 607, 645, 665-6, 703, 707). The date of the conference has not been definitely fixed, but it must have been on the 28th or 30th of January, 1922. The 29th of January was a Sunday. The conference did not last long; probably an hour or an hour and a half (R. 607, 623).

The first subject taken up at this conference was the Western trip of Bain relative to the Pearl Harbor project and the exchange of California royalty crude oil for fuel oil in storage (R. 693-4). Bain gave the details of his visits to the various oil companies on the Pacific Coast and of the reception he had met with; and stated what he thought the prospects were of procuring an oil company to make such a contract (R. 694, 707). The discussion was general and informal and the conversation eventually turned to the possibility of drainage of Reserve No. 3 (R. 694, 707).

Bain and Ambrose reported that the Teapot Dome was subject to drainage, which would increase

with time, **but which was not immediately serious** (R. 665-6, 694, 703, 707). There was some doubt at that time as to whether the saddle of the Teapot Dome structure contained oil or water; and both Ambrose and Bain agreed that if the saddle contained water, it would constitute a seal or wall between the Teapot Dome reserve and the adjoining Salt Creek structure (R. 692). **In fact, drainage of Naval Petroleum Reserve No. 3 was then more a matter of suspicion or fear** (R. 692); **and Bain says he had no realization that their informal conversation was going to dispose of the 9,000 acres of oil land in the Reserve by lease** (R. 694). Teapot Dome was then known to contain two oil bearing sands, known as the First and Second Wall Creek sands. The First was estimated to contain between 50,000,000 and 55,000,000 barrels of oil.

Fall, Bain and Ambrose all knew that the First Wall Creek sand of the Teapot Dome was not subject to drainage because it was sealed off by a water seal from the same sand in the Salt Creek area (R. 691, 706). The only question, therefore, was as to the Second Wall Creek sand.

Fall or Robison then said that the situation should be taken up with the Navy Department (R. 694). Robison stated that the Navy would want a pipe line and also an exchange arrangement, which would provide for storage; but added that this was merely his own personal opinion and that he would therefore take up the matter with the Navy Department in order to see what they wanted to do (R. 695).

At the conclusion of the conference Robison went directly to Denby (R. 607) and reported to him that the danger of drainage of Naval Petroleum Reserve No. 3 was grave and that the Interior Department had recommended immediate action for the protection of the Reserve (R. 584). He personally recommended that action be taken; and after a conference lasting about half an hour, Denby directed him to proceed at once to accomplish the opening and development of the Teapot Dome as a whole (R. 584, 607). Denby expressed opposition to any "unnecessary development." Robison told him that the "unnecessary development" was a matter that depended upon a big question. **He told Denby that probably with a less development "the drainage of the property might be secured against, but if we protected the property against drainage without securing a pipe line we would not have military availability."** Robison said Denby agreed on those grounds, "connected directly or indirectly with the strengthening of the national defense, to undertake the development of the complete Reserve" (R. 584). The next day Robison reported to Fall that Denby believed that Reserve No. 3 should be completely drilled up (R. 607).

Robison testified that he decided to lease the entire Teapot Dome because (1) he insisted upon a pipe line, (2) there was a national emergency and (3) there was serious drainage of the Reserve (R. 584-9, 645). It is significant that Fall too wanted a pipe line (R. 695); that Robison said nothing about a genuine national emergency at the January con-

ference in the office of Fall (R. 695); and that Bain and Ambrose reported at the January conference that the drainage of the Teapot Dome was not immediately serious (R. 703, 707). **In addition, Bain testified without contradiction that there was no necessity for rushing a lease through in three months' time in order to protect the Reserve against drainage, as was actually done (R. 692); and also that there would have been ample time to drill a test well in the saddle of the Teapot Dome structure, and if oil was found there, to procure competitive bids for a lease (R. 692).**

It is uncontradicted that the Navy Department then had an appropriation ample to drill experimental wells and determine thereby accurately the question whether any drainage, and if so, how much Teapot Dome was liable to suffer (R. 608). Ambrose testified without contradiction that his statements at the January conference as to the possibility of drainage did not differ in effect from his written report of February 18, 1922. In that report Ambrose absolutely refuses to state an opinion as to whether drainage is taking place or is threatened, but makes any possibility of drainage conditional upon the contents of the saddle, *i. e.*, water or oil, which at that time could not be ascertained (R. 705; see also *infra* p. 67 this brief).

(b) *Sinclair's proposition of February 3, 1922.*

Within two or three days after the decision to open up and develop the entire Teapot Dome, Sinclair and Zevely, his counsel, appeared in Fall's

office (R. 607). Fall told Robison that he had sent for Sinclair to consider the conditions under which the Reserve was to be opened and instructed Robison to set forth to Sinclair in as much detail as possible what would be necessary in any proposition for the leasing of Reserve No. 3 (R. 589, 607, 612).

Robison then and there told Sinclair that the Reserve should be developed as a whole; that a pipe line should be constructed of adequate capacity to care for the production of the field; and that the proceeds from the royalty crude oil should be directed towards the erection and filling of specified storage facilities along the Atlantic Coast (R. 589, 607, 612). He carefully explained to Sinclair that the royalties were not to be taken in cash because the cash would have to be covered into the United States Treasury (R. 616); and that, therefore, the exchange of royalty crude oil for fuel oil in storage must be accomplished without the use of cash (R. 589, 612). No mention was made by Robison of the outstanding placer mining claims because he had not heard of them at that time (R. 609, 612).

Appellants' brief will be searched in vain for any mention of this conference. This is not strange, in view of their present contention that the lease was made purely as a conservation measure, and not to obtain storage.

On February 3, 1922, Sinclair submitted a written proposition stating the terms and conditions on which he would undertake the development of the entire Reserve (Pl. Ex. 17; R. 324-6). This long detailed

proposition was addressed to the Secretary of the Interior; and contained, *inter alia,* an undertaking to quiet all of the outstanding placer mining claims on the Reserve (R. 324, 325).

Sinclair could not have learned anything about these claims from Robison. The Navy apparently knew nothing about them. He must have discussed them and learned about them from Fall, and Fall's statement must have been the genesis of his proposition to quiet them, which, as we shall hereafter show, in effect cost the United States $1,000,000.

Reference was also made in this proposition to the alleged recent drilling and discovery of oil in the saddle, which Sinclair stated he regarded as conclusive evidence of the fact that the Teapot Dome was not a sealed dome and that the Reserve was then being drained (R. 325-6).

On the same day, Fall and Sinclair personally conferred in Fall's office; and, upon Sinclair's departure, Fall called Ambrose into his office, read to him Sinclair's proposition of February 3, 1922, and ordered him to get up a memorandum on drainage (R. 336, 708). Ambrose rendered his written report on February 18, 1922 (Pl. Ex. 23; R. 337-9). That report showed that until wells had been drilled in the saddle of the Teapot Dome structure certain unknown factors made it impossible to definitely predict whether or not the Second Wall Creek sand of the Reserve was subject to drainage by the Salt Creek field; and stated that if oil should be found in the saddle in the Second Wall Creek sand, then

the leases along the northern boundary of the Reserve would result "in drainage of this sand in the Teapot Dome during the next six or seven years to a point on the south section line of Section 28 T. 39 N., R. 78 W., and if conditions are favorable the productivity of the sand will be affected even farther to the south" (R. 337-39).

This memorandum by Fall's own technical expert wholly negatived any necessity for making a lease. Appellants nowhere refer to it or comment on it. And yet on the very day of its receipt Fall instructed Ambrose to begin the preparation of a lease.

(c) *The drafting of the lease of April 7, 1922.*

Upon the submission of the Ambrose report of February 18, 1922, Fall and Sinclair again conferred (R. 339, 708). In the midst of this conference, Ambrose was called in and introduced to Sinclair and Zevely (R. 339, 708). Fall then outlined the terms of the proposed lease and instructed Ambrose to prepare a rough draft of a lease embodying those terms (R. 339, 708).

The work on the rough draft of the lease was mainly done in the Washington office of Zevely (R. 327, 339). When any controversy arose about what should or should not be in the lease, the question was always referred to Fall, who not only made all decisions as to the terms of the lease but also dictated the preamble and made several changes in the wording of the oil certificate, etc. (R. 327, 339-40). Ambrose was merely permitted to work up the rough draft and to furnish information to Fall (R. 340).

On page 28 of the Mammoth brief it is asserted that Ambrose took part "in the negotiation" of the lease. This is quite incorrect. Ambrose himself testified that he only did the drafting, and that all matters were referred to Fall for decision (R. 340). Zevely, Sinclair's attorney, also testifies that so far as he was aware, Fall made all decisions for the Government, although he did not know with whom Fall consulted before making such decisions (R. 326-327).

The draft of the lease was not submitted to Judge Finney or any other lawyer in the Department of the Interior (R. 285, 339, 405).

On February 28, 1922, Sinclair caused the Mammoth Oil Company to be incorporated under the laws of Delaware (R. 551).

(d) *The purchase and tender of the Pioneer and Belgo claims.*

From January to March, 1922, the secretary of the Pioneer Oil & Refining Company had been preparing data looking towards a proposal to lease the Reserve (R. 345). On or about March 8, 1922, the officers of the Pioneer and Belgo Companies congregated in Washington, learned of Sinclair's bid for a lease of the Reserve; and immediately entered into negotiations with Sinclair for the sale of their placer mining claims (R. 345, 347). These negotiations eventuated in a written contract, dated March 11, 1922 (Pl. Ex. 32; R. 345-6), which provided for the payment of the equivalent of $1,000,000 by Sinclair for the Pioneer

and Belgo claims. Quit-claim deeds dated March 10, 1922, were given by the Pioneer and Belgo Companies to the Mammoth Oil Company (Pl. Exs. 28 & 29; R. 344).

On March 11, 1922, Mammoth formally applied to Fall for a lease of the entire Reserve (Pl. Ex. 27; R. 343-4). At the same time it tendered and filed a quit-claim deed to the United States for the Pioneer and Belgo claims (Pl. Ex. 31; R. 344). Accompanying the application of Mammoth was a letter from Sinclair to Fall (Pl. Ex. 26; R. 342-3), in which Sinclair guaranteed that he would become the owner of all of the capital stock of the Mammoth Oil Company and would personally guarantee the performance of all of its obligations in the event that a lease of the Reserve was granted to Mammoth.

At this time, Robison first learned of the Pioneer and Belgo claims and was then informed that Fall had succeeded at his own instance in securing their surrender as a condition precedent to the execution of the lease (R. 656). But he did not see the quit-claim deeds and was not told by Fall where the latter had gotten them or the consideration paid for them (R. 656). These facts were not known by Robison until perhaps a year later (R. 656).

(e) *The exclusion of other applicants for a lease.*

Although there was no public notice by advertising or circularization of the Government's intention to lease Reserve No. 3 (R. 286), yet there was a large number of inquiries from operators seeking to learn

whether the Teapot Dome would be opened for drilling (R. 620, 676). Certain large and responsible oil interests applied to Fall in vain for a lease on the Reserve.

(1) Frank E. Kistler.

Kistler was Chairman of the Board of the Producers & Refiners Corporation, a Wyoming company engaged in practically all the branches of the oil industry and with assets appraised at $50,000,000 net value (R. 355, 358). This company was considering the making of a bid upon the Teapot Dome structure, if it should be put up for public bidding (R. 357).

In March, 1922, Kistler called on Assistant Secretary Finney and stated that the purpose of his call was to discuss the matter of leasing the Teapot Dome (R. 355-6). Judge Finney replied that there was no need of wasting time with him because that matter was in the hands of Fall and he would have to talk with him (R. 356). Accordingly, Kistler made an appointment with Fall (R. 356).

In discussing the matter with Fall, Kistler first told him something about the Producers & Refiners Corporation; advised him that the company did not wish to be hoggish about the matter and would be satisfied to lease only part of the structure; proposed to lease 640 acres at a twenty-five per cent. royalty; and offered to file a written application therefor (R. 356). Fall replied that he was not ready to receive any applications or to consider the leasing of Reserve No. 3 and could not then consider his proposi-

tion; but promised that he would notify Kistler and give him a fair and equitable chance to bid on the Reserve, if he decided to lease it (R. 356).

There was no discussion about existing placer mining locations nor was anything said to Kistler relating to a possible pipe line or the building of storage tankage in exchange for royalty crude oil (R. 357). Kistler heard nothing further from Fall and subsequently learned from the newspapers that a lease of the Reserve had been granted to Mammoth (R. 357). Robison confessed that he could not remember ever having heard of Kistler (R. 616).

(2) Amos L. Beaty.

Late in February, 1922, James C. Crawford, an attorney, called upon Fall and asked him if there was any possibility of leasing the Reserve or having it developed on behalf of the Government in any way (R. 402). Fall stated that he had been considering such a proposition and had concluded to offer the Reserve for development; but that he would not offer it publicly (R. 402).

As a result of this conference, Crawford got in touch with Mr. Lufkin and Judge Amos L. Beaty, Chairman of the Board and President of the Texas Company, an oil company with a capital of approximately $165,000,000 (R. 348, 402). Beaty sought an interview with Fall and an appointment was made for March 30, 1922 (Pl. Exs. 33 & 34; R. 348). The fact that the interview was sought by Beaty and not by Fall flatly contradicts the often repeated state-

ment by Fall that he had attempted to get a bid or a proposition from the Texas Company (R. 591, 615).

Beaty indicated to Fall that the Texas Company would like to consider the taking of a lease for the development of the Reserve; that his company understood that the Reserve was to be leased; and that he wanted to talk to Fall about it (R. 348). Fall replied that he had a satisfactory proposition from Sinclair, but that he would nevertheless be glad to have the Texas Company also submit a bid (R. 348-9). Beaty then stated the royalties which his company was willing to pay on the basis of the production of each individual well, the royalty to be satisfied by the exchange of naval fuel oil at Atlantic and Gulf ports upon the basis of one to one and a quarter barrels of fuel oil for a barrel of royalty oil dependent upon the place of delivery (R. 349).

Fall informed Beaty that there were certain outstanding placer mining claims on the Reserve; that it would be his policy in leasing the Reserve to require if possible that these outstanding claims be satisfied; and that the company acquiring and taking care of these outstanding claims would naturally be given preferential treatment (R. 349). He also stated that Sinclair had acquired these claims and that he (Fall) then had the conveyance or conveyances in his possession (R. 349).

Beaty told Fall that he was under the impression that quit-claim deeds for these claims had been delivered to Sinclair conditioned upon the latter getting a lease; and that it might be possible for the Texas

Company to meet his policy or requirement (R. 349-50). Nothing pro or con was said on that subject by Fall who mentioned the price paid by Sinclair for the claims (R. 350). Fall said nothing to Beaty about the pipe line (R. 353) or the construction of storage tankage for fuel oil or the exchange of kerosene, gasoline and other petroleum products (R. 349, 355).

It thus appears that Fall did not submit to Beaty a proposition on the part of the Government similar to that which he had then in effect concluded with Sinclair. His failure to do so indicates his desire that Beaty should not bid and his intention to keep him from bidding. **Beaty got the impression that Fall did not care to go any further with him in the negotiation for a lease of the Reserve and that he would not again hear from Fall on the subject** (R. 350). **In this he was correct** (R. 352).

The conversation then shifted to the Salt Creek field and Fall indicated a desire that the Texas Company should become interested in operations in that section (R. 350). Beaty discussed a plan that he had in mind of building a refinery at Casper, Wyoming, and connecting that refinery with the Salt Creek field by a pipe line (R. 350). This appealed to Fall, who then said that the Government had some royalty oil at Salt Creek and stated that they might work out an exchange of royalty oil for fuel oil (R. 350).

Beaty tentatively made the same exchange proposition with regard to the Salt Creek royalty oil that he had previously made in connection with his proffer

for a lease of Teapot Dome (R. 350). No conclusion was reached and Fall took the matter under consideration (R. 350).

Beaty left Washington that afternoon for Asheville, North Carolina, to be gone about two weeks (R. 350). Soon after his arrival there, Fall sent him a telegram inquiring **whether in connection with the Salt Creek royalty oil,** Beaty intended to exchange Navy specification Bunker A fuel oil (Pl. Ex. 35; R. 351). To this telegram, Beaty at once replied by wire that he did (Pl. Ex. 36; R. 351).

Fall wired back, giving the Navy specifications of Bunker A, B and C fuel oil and then inquired if Beaty had meant Navy specification Bunker A fuel oil (Pl. Ex. 37; R. 351-2). Beaty replied by telegraph, stating that he meant Navy specification Bunker A oil in connection **with his lease proposition and that he was still willing to go that far in order to obtain a lease of the Teapot Dome on royalty basis and other terms previously outlined or to be agreed upon** (Pl. Ex. 38; R. 352). He further stated that he thought his tentative proposition **for Salt Creek royalty oil,** though contemplating Navy specification Bunker A oil, was too liberal; and he accordingly withdrew it with the request that he be permitted to substitute Bunker C oil or else decrease the ratio of fuel oil by one-fifth (Pl. Ex. 38; R. 352). He concluded his telegram with the statement that there were a number of details concerning **both the Teapot Dome lease and the Salt Creek purchase, which would have to be considered, and he hoped that Fall could hold**

the matter up until his return to New York one week hence (Pl. Ex. 38; R. 352). **To this last wire, Beaty never received a reply** (R. 352), **and he first learned of the leasing of the Reserve to Sinclair when the matter became public** (R. 352-3).

Fall's utter bad faith in his dealings with Beaty is demonstrated by his conduct with regard to Beaty's propositions. Bain was present when Fall received Beaty's last telegram. Fall on examining it said to Bain that there was no use negotiating any further with Judge Beaty (R. 668, 676, 697). Beaty's proposition was better than Sinclair's on the ratio of exchange of fuel for royalty oil. Fall never took the trouble to ascertain whether Beaty would meet Sinclair's proposition on the amount of royalty to be rendered by the lessee to the Government. He never took up with Beaty the storage tankage proposition. He never discussed with Beaty the building of a pipe line to connect with other transcontinental pipe lines from the Salt Creek Field.

Bain testified that Fall and he knew that the Texas Company was a very large company and entirely able financially to carry out anything that it undertook (R. 697). **He further admitted that Beaty by his telegram of April 6, 1922, clearly showed that he was willing not only to give Navy specification Bunker A oil in exchange for Government royalty oil but also to give substantially twenty per cent. more of such Bunker A oil than Sinclair's proposition involved** (R. 696). **The explanation of such conduct lies in the fact that Bain knew that Sinclair was to have a lease**

of the Reserve sometime before Beaty submitted his proposition (R. 671).

Fall told Robison about the Beaty proposition **after the lease with Sinclair had been agreed upon in all essential respects** (R. 591, 615). **He also told Robison that Beaty's proposal was not as good as Sinclair's** (R. 591, 643, 656-7).

That Fall deliberately misled Robison as to the terms of the Beaty proposition readily appears from the following excerpts of Robison's testimony (R. 653, 656):

> "* * * All I got out of the Beaty offer, the terms of the Beaty offer, is the recollection that their royalties were somewhat lower than we had developed with the Sinclair people; that the pipe line was not going to be put in, nor would they bind themselves for the construction of storage facilities." * * *
>
> "Referring to my testimony that I am not sure whether I saw the telegram from Beaty of April 6th, 1922 (Pl. Ex. 38) I said that Secretary Fall said to me that Mr. Beaty, on April 6th, had telegraphed him that he meant Navy specification Bunker A in connection with the lease proposition, being willing to go that far in order to obtain a lease on royalty basis and other terms outlined, or to be agreed upon. Secretary Fall did not tell me that Beaty was still willing to discuss the terms of a lease. * * * Secretary Fall reported to me that Mr. Beaty had withdrawn his previous proposition with regard to Teapot Dome as too liberal; that the amount he was offering us was decreased by some percentage that he states in the telegram. I think

> 1/5. Secretary Fall stated to me that Beaty had at first been willing to take the lease on Teapot Dome, and had made a certain proposition, and had on April 6th cut that proposition down, and that telegram so states."

It is no wonder that Robison expressed the view in his testimony that the Texas Company had no chance to compete for a lease of Reserve No. 3 (R. 615).

Ambrose, who prepared a rough draft of the lease of April 7, 1922, in accordance with the terms outlined by Secretary Fall (R. 339-40, 591), testified that the offer from Beaty of the Texas Company for a lease of the Teapot Dome was the only proffer of which he ever heard (R. 340).

(3) Birch Helms.

About September 1st, 1921, Birch Helms, Vice-President of the Texas-Pacific Coal & Oil Company, called on Assistant Secretary Roosevelt and Judge Finney in regard to a lease of Teapot Dome; and was informed by them that it was not to be leased (R. 382). Early in April, 1922, Helms was in Washington, and called on Denby to discuss the matter of a lease of the Reserve (R. 382). Denby advised him that the matter was entirely out of his hands and that he should talk with the Interior Department (R. 382). Subsequent to that, Helms talked with Finney and was told by him that the matter was entirely in the hands of Fall (R. 382). He then saw Fall on or about April 10, 1922 (R. 382).

At this conference, Helms related to Fall his earlier

unsuccessful attempt to obtain a lease, and expressed a desire now to submit a bid (R. 382). Fall replied that he would be very glad to entertain such a bid; ascertained from Helms that the Texas-Pacific Coal & Oil Company had no connection with the Standard Oil interests; and then asked if Helms' company was competent to handle the matter (R. 382). Helms expressed confidence in the competency of his company to handle a contract for the Reserve; and they then talked at great length concerning pipelines, tankage and the interchange of oil (R. 382-3).

Helms stated that he had no practical knowledge of the oil business and that the only way in which the matter could be intelligently discussed was for Fall to discuss it with other officials of the company (R. 382). He asked for such an opportunity; and Fall said he would be very glad to confer with them at Three Rivers, New Mexico, where he was going within a couple of days (R. 383).

We know that when Fall discussed the matter with Helms he had signed the lease with Sinclair on April 7. The lease having been executed he discussed storage tankage and other such matters with Helms, although he had sedulously avoided doing so with Beaty. **When Helms left, Fall practically told him that he would entertain a bid from the Texas-Pacific Coal & Oil Company; and accordingly Helms went back and discussed the matter with the officials of his company** (R. 383). He also discussed the matter with Judge Parker of the Texas Company and got definite assurance from him that the Texas Company would

be willing to go in with the Texas-Pacific Coal & Oil Company in handling the Reserve (R. 383).

On April 19, 1922, Helms wired Fall that he had just noticed a newspaper report from Washington, stating that Sinclair had closed a contract for the development of the Teapot Dome structure; and earnestly requested an immediate conference (Pl. Ex. 64; R. 383-4). A second telegram on the same day from Helms called Fall's attention to his previous statement in Washington that he would hold open action on the Teapot Dome structure and the Salt Creek matter for another month; and also referred to the promise made in September, 1921, by Denby and Finney that Helms would be advised as soon as the Government considered the development of the Reserve by private companies (Pl. Ex. 65; R. 384).

Fall replied from Three Rivers, New Mexico, by telegraph that the Teapot Dome matter had been closed but that the Salt Creek royalties would be open until his return to Washington (Pl. Ex. 66; R. 384-5). On April 21, 1922, Helms wired Fall again protesting against his company not having been accorded an opportunity to bid on the Teapot Dome lease and stating that he would be glad to confer with Fall at any time he might appoint with reference to the Salt Creek royalty oil (Pl. Ex. 67; R. 385).

(f) *Fall's private arrangement with Sinclair for certain sub-leases.*

In the late spring of 1921, John C. Shaffer visited Secretary Denby and Secretary Fall about an applica-

tion for a lease on certain lands situate in the Teapot Dome reserve (R. 359). Pursuant to the suggestion of Denby, Shaffer on May 11, 1921, submitted a formal application for a lease on said lands (Pl. Ex. 39; R. 359-61). After the promulgation of the Executive Order of May 31, 1921, this application was forwarded by Denby to Fall (Pl. Ex. 42; R. 361-62); and the latter on June 17, 1921, wrote Shaffer that the Interior Department did not feel warranted in leasing any of the land in Reserve No. 3 at that time and that if circumstances should later justify some development in this Reserve his application which had been placed on file would have the consideration of Fall (Pl. Ex. 44; R. 362-3).

On or about March 16, 1922, Shaffer met Fall in Washington by appointment, and was informed at that interview that Fall was then in negotiation with Sinclair for a lease of the Reserve (Pl. Ex. 49; R. 365). He called Fall's attention to the fact that he had a written application on file in the Department and that he expected to get some of the Teapot Dome land (R. 365). Fall said that he had already told Sinclair of Shaffer's application and that he wanted Sinclair to reserve 200 acres out of the Reserve for Shaffer (R. 365). He advised Shaffer to see Sinclair. Shaffer protested that he was not satisfied with 200 acres and added that in view of his application for 600 acres, he thought that 200 acres was a very small proportion of the 9,000 acres which Sinclair was getting (R. 365). Fall replied (R. 365-6):

"Well, you go up and see Mr. Sinclair and I think you will find him a very reasonable man and you probably will make satisfactory arrangements with him."

At Fall's suggestion, Shaffer met Sinclair in the latter's New York office, and recalled to Sinclair his application for 600 acres of land in the Reserve and said he was entitled to some of the land and wanted that much if he could get it (R. 366). **Sinclair informed Shaffer that Secretary Fall had said to him that he wanted Sinclair to reserve 200 acres of the Reserve for Shaffer, 80 acres of which was to go to Gerald Hughes** (R. 366). Shaffer replied that he had nothing to do with Gerald Hughes in any way and that 200 acres of land would not be at all satisfactory to him (R. 366). At a second conference, Sinclair suggested that Shaffer accept 420 acres in place of 200 acres and this was agreed to by Shaffer in order to get the deal consummated (R. 366).

The result was that Shaffer and Sinclair dickered about the matter for months (Pl. Exs. 51-59; R. 367-373). At no time did Sinclair deny the arrangement with Fall for acreage in the Reserve for Shaffer and Hughes; and on March 23, 1922, Shaffer wired Fall that he had agreed with Sinclair for a certain amount of acreage and was very grateful to Fall for his interest and help in the matter (Pl. Ex. 50; R. 366). Again on April 19, 1922, Shaffer wrote Judge Finney that he had a personal interest in the Mammoth lease of April 7, 1922, and that Secretary Fall had arranged with Sinclair for some acreage

in the Reserve for Shaffer personally (Pl. Ex. 60; R. 373-4).

Between March 15th and April 1st, 1922, Gerald Hughes called upon Fall in Washington, and stated that he had heard that Fall was going to lease the Reserve to Sinclair (R. 711-12). Fall replied that that was correct and that he was now in the process of negotiating a lease with Sinclair, the terms of which he outlined to Hughes (R. 712). He also suggested that he would hear a proposition from Hughes (R. 712). The latter commended the favorable terms of the Sinclair lease and said that the said terms were beyond what he would be interested in (R. 712). A very significant side-light upon this interview is the fact that Fall had also privately arranged with Sinclair to reserve 80 acres of the Reserve for Hughes (R. 366). This private arrangement was never denied.

While appellants quote Hughes' testimony repeatedly as to the favorable terms of the Mammoth lease, they are strangely silent as to Hughes' motives for so doing, and they nowhere comment on the fact that Fall by a private arrangement sought to set aside through Sinclair certain acreage in the Reserve for Hughes.

(g) *The pretended exclusion of Standard Oil interests from the Reserve.*

Fall made a great virtue of the fact that he would not permit any Standard Oil Company to have a lease on the Teapot Dome because the Standard interests already had a monopoly in the adjoining

Salt Creek field (R. 382, 386, 613, 675). He gave this as the reason why he would not deal with the Midwest Company, which controlled the Pioneer claims (R. 386, 591, 675). He constantly harped upon the fact that Sinclair was an independent and a big enough independent to handle the proposition (R. 383, 638).

Nevertheless, Fall knew at the time that the only pipe line concern with which Sinclair was connected was the Sinclair Pipe Line Company, **owned half and half by Sinclair's principal company, the Sinclair Consolidated Oil Corporation, and the Standard Oil Company of Indiana, the then owner of the Midwest Company** (R. 676). He subsequently agreed formally that the Sinclair Crude Oil Purchasing Company should buy the Salt Creek and Teapot Dome royalty oil, and he knew **that company was owned half and half by the Standard Oil Company of Indiana and the Sinclair Consolidated Oil Corporation** (R. 676). It is indeed significant that when Gerald Hughes heard of the proposed lease of Teapot Dome to Sinclair, he said to Fall that in his judgment, Sinclair was acting in co-operation with the Standard Oil interests and that it looked to him (Hughes) "like Maggie in another dress" (R. 713). In answer to this, Fall vouchsafed a laugh (R. 713).

(h) *The execution and concealment of the lease of April 7, 1922.*

By the delivery on March 11, 1922, of the quit-claim deeds to the United States, the "requirement" of

Fall that the Pioneer and Belgo claims should be satisfied, if possible (R. 349), was fulfilled; and everything was now set for the execution of the lease to the Mammoth Oil Company. Robison testified that between March 1st and 10th, it was determined that Sinclair should have the lease (R. 614). About this time, Robison suggested for the first time that it would be a good thing to get some competition; **but Fall thought that competition was not necessary and Robison agreed** (R. 615).

Since February 18, 1922, Ambrose of the Bureau of Mines, and counsel for Sinclair, had been preparing a draft of a lease embodying the terms outlined by Fall (R. 339, 708). They continued to draft and redraft the lease for a month or six weeks (R. 339). **All decisions as to the terms thereof were, however, referred to and decided by Fall** (R. 327, 340), **who also dictated the preamble and made several changes in the lease, including the wording of the oil certificate** (R. 339).

Robison testified that about March 30, 1922, the rough draft of the lease was handed to him (R. 614). The lease in its final form was signed by Fall as Secretary of the Interior "and for the Secretary of the Navy" (R. 635) in the presence of Sinclair, Zevely and Ambrose (R. 340).

There was some question as to whether or not the lease should be signed by Denby; and at or about the time Fall signed the lease, it was determined that it was desirable Denby should also sign it, whether necessary or not (R. 644). Accordingly,

Robison took the lease to Denby, who signed it on or about April 12, 1922 (R. 614, 644). The executed lease, dated as of April 7, 1922, is Exhibit B of the bill (R. 14-36).

The executed lease was that day returned to Fall, who locked it in the drawer of the desk in his office in the presence of Judge Finney and Fall's Administrative Assistant, C. V. Safford (R. 286-7). Fall gave the key to Safford and instructed him and Finney not to make the lease public (R. 287). On the same day,—April 12, 1922,—Fall wrote a letter to Denby (Pl. Ex. 7; R. 287-8) in which he enclosed for the files of the Navy Department (1) a triplicate copy of the lease (2) a Brief Memorandum of the terms and conditions of the lease (Pl. Ex. 7A; R. 288-9) and (3) a Bureau Memorandum of the Interior Department forbidding the giving out of any information whatsoever concerning the lease (Pl. Ex. 7B; R. 290).

In keeping with this extraordinary letter of April 12, 1922 (Pl. Ex. 7; R. 287-8), in which Fall deemed it necessary to outline the terms and conditions of the lease, are the statements by Denby at that time to Representative Mondell and Helms that the entire matter of the leasing of the Reserve had been handled by Fall in person (R. 382, 399). This corroborates the testimony of Robison that Denby never was present at any of the conferences (R. 627) and that Fall represented the Government in all negotiations with the Sinclair interests (R. 615). This fact helps to explain why Denby knew and desired that all mat-

ters of discretion under the lease should be vested in Fall alone (R. 636).

Fall permitted Sinclair to give his personal bond as security for the performance of the terms and conditions of the lease (R. 287). When, however, the news of the leasing of the Reserve began to get out and Congress commenced to investigate matters, pursuant to the resolution of Senator Kendrick on April 15, 1922 (R. 393), Fall wired from Three Rivers to Safford to notify Sinclair immediately to furnish the bond of a surety company in view of this Congressional agitation (Pl. Ex. 103; R. 423-4). Safford assured Fall on April 18 that the matter of the Sinclair bond would receive prompt attention as he had directed (Pl. Ex. 104; R. 424).

Under the heading of "Secrecy" (pp. 77-92 *infra*) will be found the stratagems and means adopted pursuant to the secrecy pact between Fall and Robison to conceal from Congress and the public at large not only the leasing of the Reserve to Sinclair but also the terms and conditions of the lease. Suffice it to say here that the execution and the terms and conditions of the lease were kept secret as long as possible; and were not disclosed until on or about April 21, when in response to a Senate resolution, a joint letter was written by Secretary Denby and Acting Secretary Finney to the President of the Senate (Pl. Ex. 63; R. 378-81). Mimeograph copies of the lease were not available for distribution until on or about April 25 (R. 395); and the first official statement by Fall of his position in the leasing of the Reserve was contained

in his letter of June 3, 1922, to President Harding (Senate Document 210). **In addition, it is an admitted fact that there was no military need for observing secrecy with regard to the lease of April 7, 1922** (R. 624, 627).

6. The execution of the supplemental contract of February 9, 1923.

Robison testified that after the execution of the lease, he considered the question of entering into a supplemental contract to carry out those provisions of the lease which required the lessee to provide, if requested, storage for fuel oil (R. 595). The non-interest bearing oil certificates given under the lease in payment of the purchase price of the Government royalty crude oil could not be used in payment for the construction of fuel oil storage tankage until the Government had requested the Mammoth Oil Company to construct such storage tankage (R. 24-26).

On January 26, 1923, Secretary Denby by letter requested Secretary Fall to give formal notice to Mammoth to construct storage tankage for the Government, and also to prepare such supplemental contract as might be necessary to carry out a certain specified program of storage (Def. Ex. M; R. 596). Such formal notice was given, and on February 9, 1923, a supplemental agreement was entered into with Mammoth for the construction of storage tankage and facilities at certain designated points on the Atlantic Coast (Ex. C of Bill; R. 36-52). The first project under this supplemental contract was to cost

$1,090,000, and was 92% completed at the time that suit was instituted.

C. THE FRAUDULENT CHARACTER OF THE LEASE AND CONTRACT.

We have hereinabove given an outline of the transaction which culminated in the lease and contract under attack. We desire now to go into detail with regard to certain elements in the transaction which stamp it as fraudulent. In this connection we shall briefly summarize and comment upon the findings of the courts below based upon these elements.

1. Protection from drainage was not the motive for the lease.

Appellants now insist that the lease of April 7, 1922, was made only and solely as a conservation matter and because of drainage. We have above (pp. 12-18) pointed out that this is not true. We shall not repeat here in detail what we have there stated. We must, however, call attention in some detail to numerous matters which enforce the finding of the Court of Appeals (R. 822) that drainage was only a cover for the real purpose in making this lease; and which show a fraudulent intent to mask the real object under a supposed necessity for protection from drainage.

There is no contradiction that any supposed drainage of the Reserve by outside drilling would come from drilling in the Salt Creek field. This field lies along the northwesterly boundary of Reserve No. 3.

One would naturally expect, therefore, that if Fall, Sinclair, Robison and Bain wished to save oil from being drained by the Salt Creek wells they would hurry to put in wells along the northwestern border of the Reserve.

The provisions of the lease absolutely negative any such fear on the part of anyone. The lease does not require the lessee to begin operations for the drilling of the first test wells for 180 days from its execution.

Moreover, the lease requires that the first twenty wells in this intensive exploitation of the Reserve are to be scattered all over the Reserve, without any reference whatever to the northwestern border thereof, where, it is claimed by appellants, the drainage would occur. Article II provides that within six months the lessee shall proceed to drill not less than twenty test wells to the Second Wall Creek sand. This article specifies where these wells are to be located (R. 17). There is then a complicated machinery provided for testing these twenty wells (R. 18), and it is stipulated that if an average daily natural production of at least 20,000 barrels is procured, the lessee must then start within sixty days the construction of a pipe line (R. 18).

The same article provides that if the first twenty wells do not produce an average production of 20,000 barrels per day, the lessee must with reasonable diligence proceed to drill a second series of test wells (R. 18-19), and that if upon a testing of the first and second series of wells 20,000 barrels average per day

is obtained, lessee must start the pipe line (R. 19); but if not, then the lessee must at once start a third series of wells (R. 19-20).

It is significant that this Article II expressly provides that the obligation of the lessee to drill test wells of the second and third series ceases and determines if at any time the lessee begins operations to construct the pipe line (R. 20).

That we are not in error in our statement that the location of the test wells is spread all over the Reserve without any reference whatever to the northern portion thereof, which according to the Ambrose report of February 18, 1922, is the only portion which could possibly be subject to drainage, we call attention to maps of the Reserve which were before the Trial Court, and on which for the purposes of this appeal we have located the position of the various wells required by the terms of Article II of the lease.

That the leasing of the Reserve cannot be justified upon the ground of drainage will also appear from the testimony and official reports produced at the trial. The first suggestion of the possibility of drainage is found in an unofficial report prepared by Carroll H. Wegemann in September, 1921 (Def. Ex. G; R. 320-23). This report indicated a belief that drainage of the Teapot Dome was taking place and recommended the development of the property. It was discussed at the conference in late October, 1921, between Fall, Messrs. Bain and Ambrose of the Bureau of Mines, and Robison (R. 576, 664); and they then decided that it created merely a suspicion of

drainage (R. 575, 605), **which necessitated investigation but not action** (R. 576).

Wegemann, formerly of the Interior Department, was at that time in the employ of the Midwest Oil Company and hence naturally interested in the development of the Reserve in Wyoming (R. 320, 323, 575, 644). Robison testified that he investigated the possibility of drainage and that the reports from the geologists indicated that Reserve No. 3 was not being drained (R. 574-5). He further testified that the Wegemann report was the only contrary report and, although interesting, did not really create much suspicion in his mind (R. 575).

As a result of this conference, Ambrose of the Bureau of Mines, was instructed to carefully study the drainage situation with regard to this Reserve (R. 576, 665, 703). The results of his investigation were not disclosed until the conference in late January in the office of Fall after the latter's return from Three Rivers, New Mexico.

On October 25, 1921, Fall consulted George Otis Smith, Director of the United States Geological Survey, and wished to know the opinion of the Geological Survey with reference to the possibility of drainage of the Teapot Dome (R. 316). He asked that an examination be made by a competent geologist; and consequently K. C. Heald was ordered to visit the Teapot Dome and report upon the possible drainage thereof (R. 316). Upon returning from Wyoming, Heald orally reported to Fall a slight danger of drainage, which statement was confirmed by

his written report of November 30, 1921 (Pl. Ex. 16; R. 316-18).

Thereafter, neither the Geological Survey nor any member thereof was consulted (R. 317, 319, 671, 705), although Bain (R. 667, 670, 677, 697), Ambrose (R. 704) and Robison (R. 605, 646) were all familiar with the Heald report of November 30, 1921, and actually discussed it at the conference in the Interior Department in late January, 1922 (R. 705). Robison confessed that he gave no weight to the recommendation of the Heald report that no further leasing should be done in Reserve No. 3 (R. 605).

In his written report of January 12, 1922, upon the placer mining claims, Roy W. Tallman, stated that from a geological and operating point of view, it appeared imperative that the Reserve should not be opened up in any manner (Pl. Ex. 21; R. 332).

Although Bain and Ambrose had visited the Reserve in September, 1921, while on an inspection tour (R. 662-3), and had subsequently investigated the possibility of its drainage under instructions given by Fall at the conference in October, 1921 (R. 576, 665, 703); **yet it is uncontradicted that neither they nor the Bureau of Mines were ever officially requested to recommend the quantum, the order or the character of leasing to be done in the Teapot Dome** (R. 671-2, 705). **Furthermore, neither they nor the Bureau assumed any official responsibility for the leasing of said Reserve** (R. 671-2, 705), **the decision in regard thereto being made solely by Secretary Fall** (R. 672, 706).

At the conference in late January, 1922, Bain and Ambrose reported to Fall and Robison that the Reserve was subject to drainage, which would increase with time (R. 665-6, 694, 703, 707), and accordingly advised that some leasing should be done (R. 665-6); but they then stated that the drainage was not immediately serious (R. 703, 707). **The drainage in question related to the Second Wall Creek sand, since it was then known that the First Wall Creek sand with its estimated 50,000,000 or 55,000,000 barrels of oil was not subject to any drainage** (R. 691, 706).

Bain testified that he had no realization that their informal discussion at this January conference was going to dispose of the 9,000 acres of oil land in the Reserve by lease (R. 694). **In fact, drainage of the Teapot Dome was then more a matter of suspicion or fear** (R. 692); **and there was no necessity in order to protect against drainage to get a lease through in three months' time as was actually done** (R. 692).

There was some doubt at that time as to whether the saddle contained oil or water; and both Bain and Ambrose were of the opinion that if the saddle contained water, it would constitute a seal or wall between Teapot Dome and the adjoining Salt Creek Field (R. 692). Bain admitted that there would have been ample time to drill a test well and if the saddle was found not to be a water seal, then there still would have been ample time to procure competitive bids for a lease of the Reserve (R. 692).

Sinclair in his proposition of February 3, 1922, (Pl. Ex. 17; R. 324-6) reported that the Reserve

was being drained; and alleged as conclusive evidence thereof the recent drilling and discovery of oil in the saddle (R. 325-6). After a conference with Sinclair, Fall on or about February 3, 1922, ordered Ambrose to prepare a written report on the possibility of drainage of the Reserve (R. 336, 707-8). A non committal report was submitted on February 18, 1922 (Pl. Ex. 23; R. 337-9), in which Ambrose stated that until wells had been drilled in the saddle of the Teapot Dome structure, certain unknown factors made it impossible to predict definitely whether or not the Second Wall Creek sand of the Reserve was subject to drainage by the Salt Creek field; and also stated that if oil should be found in the Second Wall Creek sand of the saddle, then the leases along the northern boundary of the Reserve would result

> "in drainage of this sand in the Teapot Dome during the next six or seven years to a point on the south section line of Section 28, T. 39 N., R. 78 W., and if conditions are favorable the productivity of the sand will be affected even farther to the south" (R. 337-9).

It is noteworthy that this report shows that on February 18, 1922, it was not definitely known whether the saddle of the Teapot Dome contained oil or water and also that no well had yet been drilled in that saddle.

Robison testified that he was not influenced by Ambrose's written report of February 18, 1922, because he had already then decided to lease Reserve

No. 3 (R. 608). He claims that Bain and Ambrose reported serious drainage at the conference in late January 1922 (R. 583-4, 607, 645), although Ambrose testified without contradiction that his oral report at that time did not differ from his written report of February 18, 1922 (R. 705). Robison admitted that he knew of the suggestion that a test well be drilled in the saddle of the Reserve and also admitted that the Navy had an ample money appropriation to do so (R. 608); but decided not to investigate because of the existence of a "national emergency" (R. 646) which he never mentioned to his associates at the conference in January, 1922 (R. 695).

On March 24, 1922, Bain voluntarily prepared for the Secretary of the Interior two memoranda (Pl. Exs. 157-8; R. 677-83) in order to show the effect of drainage (R. 677). These memoranda, however, admittedly had no specific reference to the leasing of Reserve No. 3; and were not requested by Fall (R. 683).

In this connection we call attention to the statements in the Mammoth Brief (p. 26) which would give the impression that this data was furnished to Fall and Robison before a decision was made to lease Teapot Dome. The facts are, however, as we have above stated them. Bain admitted definitely on the witness stand that he made up these reports for Fall after leasing to Sinclair had been decided upon. Bain's own language on the subject is as follows (R. 683):

"The memoranda had no reference, specifically, to the leasing of Naval Reserve No. 3, and was not intended as a supporting memorandum for what was being done, except in the sense that it gave specific instances of losses to the government through failure to take into account drainage and to guard against it by leases. I was not asked to furnish the memorandum to give the Secretary some support as to the execution of the lease of April 7, 1922. It would be in my mind a support for that. I had it in mind that it would be a support to the Secretary in making leases upon naval reserves, including Reserve No. 3."

In spite, therefore, of the fact that the information Secretary Fall had with respect to Reserve No. 3 was all one way and consisted of the reports of Heald, Tallman and Ambrose which were in writing, and the conferences with Bain and Ambrose which were oral, he determined to lease the Reserve. These reports one and all indicated as clearly as anything could indicate that there was no immediate necessity for any leasing whatever. They further indicated that any drainage would be at the northern end of the Reserve, and that no one thought there could be any drainage in the southern part. Bain and Ambrose stated that the question whether there would be any drainage depended upon certain underground conditions in the so called saddle. They agreed that no definite conclusion could be reached until those conditions were ascertained. Certain of

the reports furnished Fall clearly indicated that no leasing whatever was required at the time.

It is true, moreover, that despite these reports, Fall, in March, 1922, told Hughes he had determined to lease the Reserve, and that he had a report from the Bureau of Mines, or geologists acting for the Government, that drainage was taking place right along and that under all the conditions the Government should protect itself by making a lease (R. 712). Again, in Fall's memorandum of April 12, 1922, to Denby (Pl. Ex. 7a, R. 288-89), Fall stated that the Mammoth lease was based upon the necessity of preserving the oil from drainage by extracting it and storing it above ground.

It is little wonder that on this showing the Trial Court refrained from making any finding whatever on the subject of drainage, and that the appellants failed to ask the Trial Court to make any such finding.

It is little wonder that on this showing the Court of Appeals said on the subject of drainage (R. 822):

> "That there was remote danger of drainage of a portion of Teapot Dome by virtue of leases in the adjacent Salt Creek Field, is apparent from the record. However, the evidence clearly establishes that there was no immediate danger, and no need for haste. The drainage danger was unquestionably not imminent enough to force immediate action in the leasing of the entire property. It was a matter of five years or more, according to some of the testimony. At no time was the oil in the first Wall Creek sand, estimated

to contain between fifty and fifty-five million barrels of oil, in danger of drainage. It was not until the full scheme of development of the entire Reserve, with its attendant features, was suggested and became visualized, that these fears of drainage became acute. The drainage question is important only as bearing on the good faith of the lease. It offered an apparently valid reason for leasing the entire Reserve, and was utilized in accomplishing that result."

It is to be further noted that appellants' argument that drainage was threatened ignores the fact that if the oil was drained out of Teapot Dome into the Salt Creek field, the Government would have received higher royalties under the existing Government leases in the Salt Creek field (R. 298-9).

2. The use of the invalid Pioneer and Belgo placer mining claims to preclude competition.

The evidence discloses that the so-called Pioneer and Belgo companies claimed to have placer mining locations covering practically the entire area of Reserve No. 3. It is further in evidence that the Department of the Interior had caused an exhaustive examination to be made of these claims by a competent examiner and that a very complete report had been rendered on July 26, 1917, by the examiner, Glenn B. Morgan (Pl. Ex. 9; R. 292-8). This report demonstrated that the claims were invalid and that ample testimony was available to prove their invalidity.

The Pioneer and Belgo companies applied for leases under the Act of February 25, 1920, basing their claim on alleged prior locations (R. 286). These applications were refused by the then Secretary of the Interior, John Barton Payne, upon the ground that none of the claims had been prosecuted to discovery as that phrase is construed by the Interior Department (R. 286). Subsequent to his appointment as Assistant Secretary of the Interior on March 18, 1921, Judge Finney dismissed a petition for a rehearing in the matter, basing his decision upon the same ground (R. 286, 303).

The Pioneer and Belgo companies then filed a further petition for the exercise of the supervisory power of the Secretary of the Interior, which petition was set down for hearing in September, 1921 (R. 286, 303). Judge Finney advised the petitioners that he would not act upon their application but that they might apply to Secretary Fall for a hearing at a date convenient to him (R. 303). **Fall spoke to Finney in connection with this further petition and was told by the latter that the claims "had no validity and no standing"** (R. 286).

This petition of the Pioneer and Belgo companies had not been heard at the time Fall and Sinclair discussed a lease of the Teapot Dome at Three Rivers, New Mexico, on December 31, 1921 (R. 303). Immediately after his discussion with Sinclair, Fall caused a report to be made upon these placer mining claims by the General Land Office (R. 285, 329, 333). Safford, Fall's Administrative Assistant, in ordering

the preparation of the report, gave instructions that it was to be made up as soon as possible so that the Secretary could have it upon his return from New Mexico (R. 329, 333).

A written report was prepared by Roy W. Tallman, Special Agent of the General Land Office, was approved by L. E. Eddy, Chief of Section in charge of the matter of leasing oil lands in the General Land Office, and was submitted on January 12, 1922 (R. 285, 328-9, 333). This report referred to the earlier report of Glenn B. Morgan and observed that the facts gathered by Morgan indicated rather positively that no one had any valid claim of right or title to any of the lands in the Teapot Dome (Pl. Ex. 21; R. 329). It concluded with the statement that "there are no mineral claims to any of the lands in the said naval reserve which deserve serious consideration" (R. 332).

On March 9, 1922, Tallman was ordered to prepare a further report on the Pioneer and Belgo claims, which report was submitted on March 10, 1922, and confirmed the previous report of January 12, 1922, (Pl. Ex. 22; R. 334-5, 333). The supplementary report was delivered to Fall by Eddy, **who advised Fall at the time, as did also Tallman, that all these claims were really closed out and dead** (R. 333).

Robison testified that in January, 1922, he knew nothing of Fall's investigation of the placer mining claims, or of the Tallman report (R. 609). He further testified that he had not heard of these claims at the time of his conversation with Sinclair late in January,

1922; and consequently did not discuss them with Sinclair, when told by Fall to set forth to Sinclair in as much detail as possible what the Government would require in a lease of the Teapot Dome (R. 607, 612, 614). **But Sinclair, in his proposition of February 3, 1922, addressed to the Secretary of the Interior, undertook to quiet all these placer mining claims** (Pl. Ex. 17; R. 324-6); **and quit-claim deeds were actually tendered to the Government on March 11, 1922, as a part of the formal application by the Mammoth Oil Company for a lease** (Pl. Exs. 27, 28, 29 and 31; R. 343-4).

On or about March 11, 1922, Robison first learned of the Pioneer and Belgo claims, the surrender of which Fall had at his own instance secured as a condition precedent to the granting of the Mammoth lease of April 7, 1922 (R. 656). **Fall did not, however, see fit to tell Robison where he got the claims and the consideration paid for them** (R. 656). **But these facts were known to Fall, who had told Beaty the price paid by Sinclair for the claims** (R. 350) **and had advised Hughes that Sinclair knew what he was doing in arranging to get these placer mining claims** (R. 714).

It thus appears from the evidence that Fall was fully advised as to the invalidity and utter worthlessness of the Pioneer and Belgo claims; and it also appears that the acquisition and tender of these claims by Sinclair was entirely a matter of private negotiation between Fall and Sinclair.

Appellants in their brief (Mammoth Brief, pp. 128-134) suggest that although the Interior Department had denied the applicants leases under the Leasing Act, the applicants still retained their placer mining claims for what they were worth. We agree. What were they worth? Every responsible adviser of Fall told him they were worth just nothing. Yet he gave a consideration of $1,000,000 for them because he could not hurry through the lease he wished to make to Sinclair without getting them out of Sinclair's way. Why the need for haste? All his advice was to the effect that he could have taken his time to dispose of these claims. All his responsible advice was (1) that there was no immediate danger from drainage, and (2) that the claims were worthless. Yet to crowd through a lease with Sinclair in record time, secretly and by private negotiation, he arranges for Sinclair to procure and deliver quitclaims of these placer mining locations at an expense of $1,000,000.

The Trial Court characterized this performance as "good business" (R. 256).

It is small wonder that the Court of Appeals in its opinion says (R. 823):

> "Secretary Fall was fully advised of the situation as to these claims and knew they were illegal and practically dead. It was the Government's business to dispose of them—not to permit them to be used as instrumentalities to prevent a 'square deal.' Of course, making the acquisition of these claims a prerequisite of any lease, when Sinclair either had them, or was in a preferred position to secure them, was a

> fraud as to other bidders, and, in its effect, removed them from the status of qualified applicants."

It may be asked, why did not Fall exercise his power by letting Sinclair get these claims and then making leases to Sinclair as the holder of the claims, under the Leasing Act of February 25, 1920? Why did he insist on clearing them up in such wise as to make a lease under the Act of June 4, 1920? A moment's reflection gives the answer. If he had made leases under the Act of February 25, 1920, the provisions of that act would have required him to sell the royalty oil for cash and cover the cash obtained therefrom into the United States Treasury. This would have defeated Robison's pet scheme of getting the royalty oil as consideration for storage, and if it had thus defeated Robison's pet scheme, Robison would have no longer been for making the lease.

Moreover, if leases had been made under the Leasing Act they could not have been made for a total of more than 3200 acres (approximately one-third of the Reserve). They again would have failed to accomplish the purpose that Fall had in mind, namely, to give a lease of the whole Reserve to Sinclair, and would equally have failed to accomplish Robison's favorite scheme of getting all the royalty oil out to pay for fuel storage.

We shall hereafter (p. 201-6 of this brief) comment upon the legality of the use of these placer mining claims as consideration for the lease.

3. The observance of undue secrecy in the negotiation of the lease.

In October, 1921, Fall and Robison, knowing that some members of Congress might object to what was being done, entered into an agreement that secrecy should be observed in order that Congress and the public should not get knowledge of what was being done, until it had in fact been done (R. 619, 610). The impelling motive for this secrecy pact was the fear that Congress would undoubtedly make trouble if the matter were brought to its attention (R. 610).

They were not the only parties to foresee the possibility of such trouble. C. S. Williams, Director of War Plans of the Navy Department, wrote in a letter dated November 4, 1921, to the Chief of Naval Operations that (R. 610):

> "There may be a certain amount of danger in giving too much publicity, because as soon as it is known what the character of the arrangements are, Congress will undoubtedly use these arrangements as a reason for cutting down appropriation for fuel and transportation. If this is done, of course the Reserves which we so badly need, and which we seek to establish, will not be established. Furthermore, it is conceivable that the whole project might be met with open hostility in certain quarters because it operates to some extent to increase appropriations under fuel and transportation beyond what is set down in the bill; **and in another way it operates to create reserve fuel storage, the construction of which has not been specifically authorized by Congress. In view**

of the foregoing it would seem advisable to close the arrangements as soon as possible without undue publicity."

An important step in the consummation of this secrecy agreement was the forestalling and prevention of the possibility of departmental leaks. This was accomplished by handling all matters pertaining to the Reserves in a non-routine manner, and also by the issuance of a departmental order forbidding bureau officials from giving out any information whatsoever.

Fall on April 13, 1922, issued the following departmental order (Pl. Ex. 7B; R. 290):

"Department of the Interior
"Office of the Secretary
"April 13, 1922.

"Memorandum.

"Referring to constant requests for information concerning rumors or statements as to the disposition of naval reserve oil lands:

"The general policy in these matters has been given publicity. In carrying out this general policy as it is being carried out through the cooperation of the Navy Department and of the Interior Department, it is being handled by the Secretary of the Interior and the Secretary of the Navy **but not in a routine manner by either department. The consequence is that the officials of the bureaus of either department are not able to give out any information whatsoever as to the detail of any plans of any kind or character."**

This memorandum was circulated through the Interior Department (R. 690); and was forwarded to Denby in a letter dated April 12, 1922, in which Fall said (Pl. Ex. 7; 287-8):

> "I am also handing you a copy of memoranda which I have made for the government of my staff in giving out any information concerning these contracts.
>
> * * * * * * *
>
> **"I have instructed my office force to give out nothing of the details of any of these contracts and to retain in a secure place the original contract with the deeds, etc. attached. This for the reason that it has been customary to file all contracts with the general files, where by inadvertence they might be subject to examination by parties not entitled to see them.** I am particularly anxious that no details should be given out pending the final agreements upon the contracts for the construction of reservoir facilities in Hawaii."

Apparently Fall had fears lest his order to maintain secrecy might be inadvertently overlooked or forgotten by some bureau chief or departmental official. When it became necessary to prepare the annual report of the Interior Department, he wired the Acting Secretary of the Interior, Judge Finney, on November 6, 1922, from Three Rivers, New Mexico, to prepare the report but cautioned him thus (Pl. Ex. 102; R. 423):

> "* * * think unnecessary go into details Naval oils as we merely cooperating with Navy * * *."

The Mammoth lease was not prepared in the General Land Office where oil leases on the public lands are generally prepared under the usual routine (R. 341-2); but was largely drafted outside of the Department of the Interior in the office of Zevely, personal counsel of Sinclair (R. 327, 339). Neither the Solicitor of the Department of the Interior nor any assistant under him was asked to draft or to pass upon the lease (R. 339, 405). No draft of the lease was submitted to Finney, although he has passed on practically all of the leases that have been made by the Interior Department since his appointment as First Assistant Secretary of the Interior (R. 285), and although Fall had authorized him to handle and sign leases on the Naval Petroleum Reserves (R. 278).

Upon its execution, Fall locked the lease in the drawer of his desk and gave the key to Safford, his Administrative Assistant, with instruction not to make the lease public (R. 286-7). The lease was not promptly filed in the Public Records Office as required under the acts of Congress (R. 626-7); and Sinclair was permitted to give his personal bond as security for the performance by the Mammoth Oil Company of the terms and conditions of its lease (Pl. Exs. 103-4; R. 423-4).

In accordance with his statement to Finney and Bain that he was going to deal with the Teapot Dome himself (R. 284) Fall seldom sought their advice concerning the Mammoth lease (R. 284-5, 666, 671, 673). He first told Ambrose of such a lease on

February 18, 1922, when in the presence of Sinclair and Zevely he outlined the terms of the proposed lease and ordered him to prepare a rough draft thereof (R. 339-40, 708).

First Assistant Secretary Roosevelt (R. 428-9, 431) and Commanders Stuart (R. 316, 626, 641) and Shafroth (R. 407-8, 626), of the Bureau of Engineering of the Navy Department were likewise not kept informed of the leasing of the Reserve. Stuart testified without contradiction that no data touching the proposed leasing went through the Bureau of Engineering and into the official files of that Bureau up to April 5, 1922, on which date he was relieved of his duty in that Bureau (R. 316); **and Robison admitted he told Stuart the intention was to drill necessary offset wells only** (R. 602).

While the Mammoth lease was thus being sedulously concealed from the public at large by enjoining the giving out of information by Government officials, by locking the executed lease in the drawer of Fall's desk, and not filing it in the Public Records Office, and by handling Naval Petroleum Reserve matters in a non-routine manner, the secrecy pact was also being enforced as to Congress and its members.

This was effected by evasive and misleading replies to written and oral requests for information or else by a flat refusal to give any information. Both the Interior and the Navy Departments pursued such a course of action towards Congress and its members. Finney and Bain both testified that pursuant to Fall's instructions, they refused to give out

any information whatsoever about the lease (R. 287, 690-1).

Between October, 1921, and early March, 1922, the Congress apparently made no inquiries in regard to the administration of the Naval Petroleum Reserves. But shortly before March 24, 1922, Congressman French of the House Appropriations Committee called Admiral Robison by telephone and requested certain data relative to the operation of the Reserves. In answer, Robison, on March 24, 1922, sent the following letter to Representative Kelley, Chairman of the Sub-Committee of the House Committee on Naval Affairs (Pl. Ex. 91; R. 415-17):

"24 March, 1922.

"My Dear Congressman:

"On Monday morning Congressman French of the House Appropriations Committee called me on the telephone and requested me to furnish certain information relative to the operation of the Naval Petroleum Reserves.

"As you doubtless know by an Executive Order of the President, dated 31 May, 1921, the general operation, conservation and administration of the Petroleum Reserves was turned over to the Secretary of the Interior. In compliance with the provisions of this order the Navy Department has come to a general agreement with the Department of the Interior relative to the Reserves and the Secretary of the Navy has designated me as his representative to confer with that Department in all matters relating to the Reserves.

"In accordance with the general agreement

arrived at between the two Departments the Department of the Interior is taking steps to have Naval Petroleum Reserves Nos. 1 and 2 drilled with offset wells in every case where adjacent property is drilled. It has been further agreed:

"(*a*) That the amount of drilling with consequent exhaustion of the Reserves shall be kept as low as practicable without risking the depletion of the Reserves by other parties.

"(*b*) That the equivalent of all royalty oil shall be delivered to the Navy in the form of fuel oil at such points on the Pacific Coast as may be found necessary for Naval use, and that this exchange of crude oil for fuel oil will be effected on as favorable terms as it is possible to obtain. It is presumed that under favorable circumstances and terms arrangements may be made for including points on the Atlantic Coast for the delivery of an equivalent supply of fuel oil to the Navy.

"(*c*) That the equivalent of the royalty oil will be placed in storage at such points as the Navy may designate.

"(*d*) That the Interior Department will exercise its best efforts to obtain for the Navy as large royalties and as favorable terms as practicable by public competition or otherwise.

"(e) That the development of Naval Petroleum Reserve No. 3 is to be undertaken only to protect the Government against depletion of the Reserve by other parties.

"In connection with this program it has been estimated that the Navy will obtain by 30 June, 1923, royalty oil amounting to 292,200 barrels, which will give an equivalent in fuel oil of 267,

400 barrels. For the fiscal year ending 1 July, 1923, the royalty oil to be obtained is estimated at 1,350,000 which will give an equivalent in fuel oil of 1,286,460 barrels. Under the terms of the agreement this oil will become a reserve—above ground instead of under ground as now.

"The following data with reference to the Naval Petroleum Reserves are submitted for your information:

* * * * * * *

"As to No. 2 Reserve it is generally admitted that no Reserve as a Reserve now exists and it will be necessary to drill up within a short time the entire Reserve. In order to meet this situation the Department of the Interior is granting leases from time to time to various operators to drill these lands on a royalty basis varying from 12½ to 25 per cent. depending upon the production of the individual lease.

"Trusting that the above information is that which you desire and assuring you that if there is any further information which I can furnish I shall be glad to do so, I am,

"Very respectfully,

"J. K. ROBISON,

"Engineer in Chief, U. S. N.

"Chief of Bureau."

Robison admitted that his letter was not a full statement of what was being done in Reserve No. 3; but attempted in the first instance to justify the concealment of matters from the House Committee on Appropriations upon the ground that he wanted to get the job done (R. 618). He later testified that he

personally delivered the letter to Representative Kelley and then told him what were the plans of the Navy Department and also how far in general terms the negotiations to lease the entire Teapot Dome had progressed (R. 618). **Representative Kelley flatly contradicted this testimony; and testified that he had never had any discussion whatever with Robison about the leasing of the Teapot Dome** (R. 740-1).

Upon receiving a wire from Leslie A. Miller on April 6, 1922, inquiring about the leasing of the Teapot Dome (Pl. Ex. 68; R. 387-8), Senator John B. Kendrick of Wyoming sent his secretary, W. A. Anderson, to the Interior Department for information from Finney (R. 393); **but was told in substance by Safford that no lease on the Teapot Dome had been signed and that Fall would be glad to consider any proposition, which Senator Kendrick's constituents desired to submit** (R. 393).

In response to the request that Senator Kendrick be kept informed of anything that was being done (R. 393), Bain on April 10, 1922, addressed a letter to Kendrick in which was enclosed a copy of the Press Memorandum of April 6, 1922 (Pl. Exs. 70 & 70A; R. 389-90). **Bain frankly admitted this statement was distinctly untrue and known to be untrue on April 10, 1922; but added that he was not at liberty to inform Kendrick that the Teapot Dome lease had been signed** (R. 690-1).

On April 14, 1922, Miller again wired Kendrick submitting a proposition to lease 640 acres of Naval Petroleum Reserve No. 3 (Pl. Ex. 69; R. 388). On

the same date, Governor Brooks of Wyoming wired Kendrick protesting against the then reported private leasing of the Teapot Dome to Sinclair (Pl. Ex. 71; R. 390-1). Having received no information up to April 15, as to the execution of the Mammoth lease, Senator Kendrick introduced a resolution in the Senate requesting the Secretary of the Interior and the Secretary of the Navy to inform the Senate whether negotiations were pending for the leasing of Reserve No. 3 (R. 393; Pl. Ex. 63; R. 378-81). A copy of the Mammoth lease of April 7, 1922, was finally received by Kendrick on April 29, 1922 (R. 393).

Governor Brooks of Wyoming, whose company would have been interested in the development of the Teapot Dome but had no opportunity to bid (R. 399), also wired Representative Mondell on April 14, 1922, protesting against the reported leasing of the Teapot Dome (R. 396). Pursuant to this telegram, Mondell called on Finney in the absence of Fall and was given the impression that no lease of the Teapot Dome had then been signed (R. 394). Mondell wrote to Fall and Denby on April 15, 1922, enclosing a copy of the telegram received from Brooks and requested a reply at their respective convenience (Pl. Exs. 74 & 77; R. 397-8). **Finney replied by letter that the leasing of the Teapot Dome was being considered personally by Fall and that his letter of protest had been transmitted to Fall for consideration** (Pl. Ex. 75; R. 397).

This was, of course, days after the lease had been signed and locked up by Fall. Denby also replied

by letter stating that the leasing of the Teapot Dome was being handled by the Secretary of the Interior in person and that he preferred, inasmuch as the entire matter had been handled by the Secretary of the Interior, that the latter should give all detailed information (Pl. Ex. 78; R. 398-9). This, although it is said Denby executed the lease April 12th and knew all about it.

After the Press Memorandum of April 19, 1922 (Pl. Ex. 62; R. 375), Mondell again called upon Finney and requested that he be permitted to see a copy of the Mammoth lease of April 7, 1922 (R. 394). Finney doubted his authority to give out the lease; and as a consequence, Mondell did not see the lease in the office of the Secretary of the Interior (R. 394-5). He then called on the Secretary of the Navy and was permitted to read the lease in the latter's office (R. 395). A mimeographed copy of the lease was received by Senator Kendrick between April 25 and April 27, 1922 (R. 395).

Senator Harreld on April 14, 1922, asked Denby to furnish him for official purposes with a transcript of all Naval Reserve leases executed since March 14, 1921 (Pl. Ex. 79; R. 403). In reply thereto, Denby wrote a letter (Pl. Ex. 80; R. 404) dated April 20, 1922, in which he stated (R. 404):

> "The executive order transferring the care, custody and operation of the Naval Reserves to the Department of the Interior was signed May 31, 1921, **and since that date the Navy Department is not in a position to give the details of leases that may have been executed**";

named two small leases executed in April and May, 1921, in the California Naval Reserves and then cross-referred Senator Harreld to the Interior Department by saying (R. 405):

> "I trust that this information will serve your purpose. It is quite incomplete, of course, but **accurate details as to the leases that have been entered into since May 31, 1921, can only be obtained from the Department of the Interior.**"

Robison admitted the evasions of this letter (R. 625).

Another example of the practice in the Navy Department of cross-referring Congressional inquiries to the Interior Department is well illustrated by the answer of Admiral Robison to the letter of Representative N. J. Sinnott, dated April 17, 1922 (Pl. Ex. 96; R. 419), in which the latter sought information in regard to the acreage and leasing of the Naval Reserves. On April 19, 1922, Robison wrote to Representative Sinnott (Pl. Ex. 97; R. 420) submitting the acreage of the Naval Petroleum Reserves but stating in regard to the leasing:

> "• • • **I am not able to give this information but it probably can be obtained from the Department of the Interior.**"

Admiral Robison testified on cross-examination that he had not given the information requested by Mr. Sinnott because of his secrecy pact with Secretary Fall (R. 620-1).

Obviously J. T. Tompkins, Acting Chief of the Bureau of Engineering in the absence of Admiral

Robison, had been well instructed by his superior not to give out information with regard to the leasing of Reserve No. 3. On April 20, 1922 (Pl. Ex. 98; R. 420), Representative McClintic had by letter requested information in regard to the acreage and leasing of the Naval Petroleum Reserves and had especially asked:

> "Has the Navy any additional contracts in contemplation for development in any one of the three Naval Reserves?"

In his reply letter of April 22, 1922 (Pl. Ex. 99; R. 421) written in the absence of Robison, Tompkins obligingly gave the acreage of the Naval Petroleum Reserves, referred to the Mammoth lease, then a matter of public knowledge, and closed his letter with the statement:

> "With respect to the remaining questions in your letter, I am sorry to state that I am not in a position to give you accurate data. This matter, as you know, is being handled by the Department of the Interior and I would suggest that inquiry be made of that Department for this data."

Representative McClintic was not discouraged by this cross-reference but wrote a letter to Fall (Pl. Ex. 100; R. 422) and finally received the desired information from Finney on May 2, 1922 (Pl. Ex. 101; R. 423).

We have so far considered the efficacious manner in which the secrecy agreement between Fall and Robison was rigidly enforced within the Interior and

Navy Departments and also as against Congress and its members. Secrecy was likewise observed as against the public at large and also as against those parties who unsuccessfully sought a lease on Reserve No. 3.

Despite the fact that there was no publication or notice of the intention of the Government to lease the Teapot Dome (R. 286), Fall received a large number of inquiries in regard thereto from applicants for leases thereon (R. 620, 676). We have already had occasion to consider just how Fall treated those parties, who called in person at the Department of the Interior and sought a lease on the Teapot Dome (pp. 43-52 *supra*). The documentary evidence discloses that those applicants who entrusted their inquiries to letters received no information whatever concerning the proposed leasing of the Teapot Dome. The inevitable answer, almost stereotyped in form, was that the application had been received, that no drilling was to be done except for offsetting purposes, that no leases had been granted and that the Department was unable to give any further information with reference thereto. The following excerpts are typical:

> "The so-called Teapot structure in Wyoming is included in what is known as a Naval Petroleum Reserve, and at the present time no leases have been granted therein or orders or regulations issued, offering the land for leasing. Am not able at this time to give you any further information with reference thereto."
>
> (Pl. Ex. 87; R. 412-13.)

* * * * * * *

> "I have to advise you that some investigations as to the situation of this Reserve are now under way, but unless they show a need for immediate drilling, it is the disposition of the Department to hold the Reserve intact for the present."
> (Pl. Ex. 81; R. 409.)

On April 6, 1922, the Inland Oil Index wired the Secretary of the Navy asking a confirmation or denial of the reported leasing of the Teapot Dome to the Sinclair interests (Pl. Ex. 92; R. 417). On April 7, 1922, the Secretary of the Navy replied by wire as follows (Pl. Ex. 93; R. 417-18):

> "Matters connected with development of Naval Petroleum Reserves are being handled by the Secretary of the Interior. Navy Department has made no contract for development of Teapot Dome."

Robison justified this misleading statement upon the ground that the Inland Oil Index had no right to knowledge of what was being done in the Navy Department (R. 620).

The opinion of the Trial Judge entirely ignores the October, 1921, secrecy pact between Fall and Robison and the many deceptive replies written pursuant thereto to members of Congress and the public at large. He expressly found that (R. 273):

> "* * * the negotiation and conclusion of said agreement (lease) was not attended by undue or unlawful secrecy."

But the Court of Appeals in its opinion under the heading of "Fraud" discussed at length the deceit

practiced as to members of Congress both by the Navy and Interior Departments (R. 824-27) and concluded (R. 828):

> "In the transaction of public business there is no necessity for scheming, deception or double-dealing, nor unless in well recognized, exceptional matters,—for secrecy. There was no legitimate reason for such secrecy as was thrown around this transaction. Secrecy is an aid to corruption—publicity its foe. If the secrecy was not to veil an ulterior purpose, it was, at least as to Congress, to ward off any investigation until after the leasing was completed."

(a) *Such secrecy not justified by military expediency.*

Admiral Robison has admitted that there was no military need for secrecy so far as the leasing of the Reserve was concerned; **and that the lease could have been given complete publicity without giving away any military matters of any kind** (R. 624, 627).

During the trial, reference was made to the letter of Acting Secretary of the Navy Roosevelt to the Secretary of the Interior dated December 9, 1921, in which he requested that all matters pertaining to the Pearl Harbor project should be regarded "in as confidential a manner as possible" because "this project is embodied in the War Plans of the Navy" (R. 703, 709). Both Finney and Bain understood that this injunction of secrecy related to the Pearl Harbor oil tanks (R. 703, 701); and Robison explained that the Navy Department desired, so far as possible,

to conceal the location of such tanks up to the moment that active construction was undertaken, at which time he freely admitted the world would necessarily learn of the Navy's storage plans (R. 627).

Appellants no longer strive to justify the observance of secrecy on military grounds, although their brief contains the fugitive hint that war plans of the Navy are secret (Mammoth Brief, pp. 145-49). The Court of Appeals, however, in the face of the above uncontradicted evidence of Robison, found (R. 825):

> "* * * The evidence negatives any idea of a military need for secrecy in the leasing of Teapot Dome."

4. Wilful disregard of competent legal advice as to illegality of fuel oil storage plan.

When Fall and Robison first discussed the exchange of royalty crude oil for fuel oil in storage in the fall of 1921 and Robison had explained in detail his plans for storage facilities, Fall expressed a doubt as to the legality of the proposition; but Robison says that he then convinced Fall that it was legal and Fall agreed to go along with the storage policy (R. 603-4).

In January, 1922, Bain went to California to interest certain oil companies in the Pearl Harbor fuel oil storage project and there learned that Mr. Sutro, counsel for the Standard Oil Company of California, Mr. Weil, counsel for the General Petroleum Company, and Mr. Herrin, counsel for the Pacific Oil Company and the Associated Oil Company, were of

the opinion that the fuel oil storage plan was illegal (Pl. Exs. 160-61; R. 684-8, 672-3). **These objections to the legality of the storage proposition were discussed by Fall, Finney, Bain and Robison** (R. 292, 304, 614, 672-3, 688); **and Fall told Robison that he feared that people would not bid on the Pearl Harbor contract and lease because of this question of legality** (R. 614).

Although the advisability of taking the opinion of the Attorney General was several times discussed, Fall opposed such action upon the ground that an adverse opinion might be prepared by some technical lawyer of that department; and that if such an adverse opinion should be signed by the Attorney General, he would be estopped from doing anything (R. 688-9). The result was that the Attorney General was never consulted (R. 434).

Despite the fact that Bain had suggested on January 25, 1922, the advisability of obtaining an opinion of the Solicitor of the Department of the Interior (Pl. Ex. 159; R. 684), and despite the fact that Finney on April 24, 1922, assured Senator LaFollette that every lease issued by the Department of the Interior "receives the consideration of its legal officers, and, of course, the issuance involves the conclusion that full authority for the action taken exists" (Def. Ex. V; R. 735); neither the Solicitor nor any other lawyer of the Interior Department was consulted or passed upon the lease or assisted in its drafting (R. 339, 405). The explanation is alleged

to lie in the fact that Fall believed he knew more law than anybody else in the Interior Department (R. 634).

Robison admitted on cross-examination that the Mammoth lease called for the construction of "fuel depots," and that he knew it was within the province of Congress to establish them (R. 611). This was in effect what C. S. Williams' memorandum of November 4, 1921, pointed out when it said that the exchange of royalty crude oil for fuel oil in storage operated "to create reserve fuel storage, the construction of which had not been specifically authorized by Congress" (R. 610). **Nevertheless, Robison decided not to go to Congress; and Congress never approved of the establishment of these fuel depots** (R. 611, 640, 652), **which involved an ultimate expenditure in excess of $100,000,000** (R. 429-30, 637). Nor did Robison discuss with Fall or Bain the fact that this form of dealing constituted the establishment of naval fuel depots without an appropriation by Congress and without the designation of the places therefor by Congress (R. 689).

Prior to the adoption of the plan to exchange royalty crude oil for fuel oil, the Navy Department was accustomed each year to request of Congress an appropriation for the establishment of fuel depots at certain specified points; but after the adoption of said plan such requests were no longer made of Congress (R. 432-4).

Both the Trial Court and the Court of Appeals

held that the Act of June 4, 1920, was ample authority for the Mammoth lease and supplemental contract (R. 271; 816). In disagreeing with the decision of the Ninth Circuit Court of Appeals in the Pan American case, the Court of Appeals called attention to the fact that that case was then pending in this Court and that this legal question would be there settled. The opinion of this Court in the Pan American case establishes beyond peradventure the illegality of the instant lease and contract. We quote the following language from the opinion:

> "• • • The work to be paid for in crude products contemplated the construction of fuel depots. • • • The record shows that the Navy Department estimated the cost of proposed storage plants and contents at approximately $100,000,000. • • • The Act of August 31, 1842, 5 Stat. 77 (R. S. 1552), gave the Secretary authority to construct fuel depots. But it was taken away by the Act of March 4, 1913, 37 Stat. 898. Since that time Congress has made separate appropriations for fuel stations at places specifically named. And it has long been its policy to prohibit the making of contracts of purchase or for construction work in the absence of express authority and adequate appropriations therefor. R. S. 3732, 3733; Act of June 12, 1906, 34 Stat. 255; Act of June 30, 1906, 34 Stat. 764. The Secretary was not authorized to use money received from the sale of gas products. All such sums are required to be paid into the Treasury. R. S. 3617, 3618, as amended, 19 Stat. 249."

And again:

> "It was the purpose of those making the contracts and leases to circumvent the laws and defeat the policy of the United States established for the conservation of the Naval Petroleum Reserves. The purpose of the representatives of the Department was to get for the Navy fuel depots or storage facilities that had not been authorized by Congress. The leases were made to obtain the crude products for use as a substitute for money to make good the amounts advanced by petitioners to pay for such improvements. The Secretary's authority to provide facilities in which to 'store' naval reserve petroleum or its products did not extend beyond those that might be provided by use of the money made available by the Act of June 4, 1920."

5. Fall's dominance of the negotiations.

As soon as the administration of the Naval Petroleum Reserves had been transferred to the Secretary of the Interior by the Executive Order of May 31, 1921, Fall lost no time in assuming full charge and control thereof.

By July 8, 1921, he was boldly proclaiming that he would handle matters pertaining to the Naval Petroleum Reserves exactly as he thought best; that he would not consult with any Navy official, except Roper; and that any such consultation would be strictly and entirely confined to matters of general policy (R. 313). This authoritative position was acknowledged and confirmed by the letter of October 25, 1921, which expressly provided that all leases

and contracts should be arranged and consummated by the Interior Department and that copies of the same should be furnished to the Navy Department only as a matter of information and record (R. 282).

Agreeably to and confirmatory of such full charge and control, Fall dominated the negotiations leading up to the leasing of Reserve No. 3 to Sinclair. At his sole instance, the Pioneer and Belgo claims were investigated immediately after his conference with Sinclair at Three Rivers, New Mexico, on December 31, 1921 (R. 285, 329, 333). It was Fall who personally sent for Sinclair after the conference in late January, 1922 (R. 589, 607, 612). It was also he who ordered Ambrose on February 3, 1922, to prepare a report on drainage (R. 336, 708) and again on February 18, 1922, to prepare a rough draft of a lease embodying certain terms that he outlined (R. 339, 708).

Not only did Fall thus take the initiative on every important occasion; but also in the many conferences with the Sinclair interests he was the sole representative of the Government, to whom all matters were referred for decision. Robison admitted that he allowed the Interior Department to do the negotiating and bring the results to him (R. 615). Zevely testified that between February 3, 1922, and April 7, 1922, there were many conferences in Fall's office between Sinclair and himself, representing the Sinclair interests, and Fall, representing the Government; and also that when any questions over the lease came up, they usually dealt with Fall, who

usually decided what should or should not be in the lease (R. 326 7). Ambrose was permitted to work up the rough draft of the lease and to furnish information; but Fall decided the terms (R. 340).

Strongly corroborative of such testimony are the following significant facts, viz: that Fall and Sinclair privately and unknown to Robison arranged for the surrender of the Pioneer and Belgo claims to the United States (R. 669, 612, 676); that Fall and Sinclair privately arranged for the giving of Sinclair's personal bond (R. 287); that Fall and Sinclair likewise privately arranged for acreage in the Teapot Dome Reserve for Shaffer (R. 365 6) and Hughes (R. 366); that Fall and Sinclair privately conferred about the latter's proposition of February 3, 1922 (R. 336, 707 8); that Sinclair addressed to the Secretary of the Interior his proposition of February 3, 1922 (R. 324), his letter of March 11, 1922 (R. 342 3) and the application of the Mammoth Oil Company for a lease (R. 343 4); that Fall himself decided to go no further with Beaty of the Texas Company, who had submitted a proposition for the leasing of Reserve No. 3 (R. 676, 697); that all applicants for leases on the Reserve were invariably referred to Fall with the statement that he was personally handling that matter (R. 382, 397, 399); that Fall never asked Bain or Ambrose or the Bureau of Mines to recommend or assume responsibility for the quantum, character and order of leasing the Teapot Dome (R. 671 2, 705), the decision in that respect in the Interior Department being made by

Fall himself (R. 672, 706); and that Fall did not consult with Finney (R. 284-5), Bain (R. 656), the Solicitor of the Interior Department, or any lawyer therein (R. 339, 405), or the Attorney General (R. 434).

Little wonder, then, that Fall took care that he should not relinquish that full charge and control after the signing of the Mammoth lease. Again we revert to the testimony of the chief witness called by the defence. **Robison confessed that it was the purpose of that lease to vest every discretionary power therein and thereunder in Fall** (R. 633-6); and further confessed that Denby not only knew this but was also desirous of it (R. 636).

Finally, after the lease had been executed, Fall locked it in the drawer of the desk in his office and gave oral and written instructions that no information should be given out concerning it (R. 286-8, 280). It was his orders which caused the substitution of a corporate surety bond in lieu of Sinclair's personal bond at a time when Congressional trouble was breaking forth (R. 423-4).

The Court of Appeals has definitely found from the evidence that Fall dominated the negotiations. Thus at R. 820, it is said:

> "Secretary Denby seemed to have so little information concerning the leasing of Teapot Dome that Secretary Fall thought it necessary to write him a long letter of date April 12, 1922, explaining the same. The evidence shows it was also explained to him by Admiral Robison before he signed the lease on April 12, 1922."

And again it is said (R. 821):

> "The activities of the Secretary of the Interior in taking care of affairs entrusted by Congress to the Secretary of the Navy were decidedly unusual and indicated a deep interest therein."

Again it is said (R. 828):

> "Whether these valuable rights were obtained by bribery or other corruption it is clear that the lease was secured for Sinclair by the influence, aggressiveness and ability exercised by Secretary Fall in his behalf and that the entire situation was so dominated and manipulated by Secretary Fall as to make certain this result."

Appellants seek to put upon the situation a gloss that Fall was acting as the mere subordinate of Denby in respect to the reserves (Mammoth Brief, p. 110). The proofs and the findings of the Court of Appeals flatly negative any such contention.

At page 111 of the Mammoth Brief, appellants indicate that Fall had had some change of heart after he wrote his declaration of July 8th that he proposed to handle the reserves exactly as he saw fit. They attempt to draw the parallel between what he did in March, 1922, and what he said in July, 1921. An examination of the record however, from which we have given above full citations, shows that from start to finish Fall dominated and controlled the negotiations and accomplished those ends which he himself had in view, irrespective of the wishes of anyone else.

In answer to the statement of counsel at the middle of page 114 of the Mammoth Brief, that the Court of Appeals fails to point to a single item to show Fall's dominance, we merely desire to refer to the language of the Court of Appeals on page 820 of the record, wherein that court refers to many of the matters we have above mentioned as significant.

6. Submissiveness of Secretary Denby.

In striking contrast to the lone hand played by Fall in administering the Reserves and negotiating the Mammoth lease, is the self-imposed inaction of Denby.

His first official act in connection with the Naval Petroleum Reserves was the voluntary surrender of their administration to the Secretary of the Interior. Early in May, 1921, he suggested that Fall should be placed in charge of the Reserves (R. 308); and when the proposed transfer met with opposition in the Navy Department, Denby took the position that the question of retaining the Reserves solely under the jurisdiction of the Navy Department was not open to discussion and that the Reserves would be transferred to the Interior Department (R. 408, 428).

Once the Executive Order of May 31, 1921, had been signed, Denby refused to shoulder any responsibility whatever and committed all matters pertaining to the Reserves to Fall. An early example of this was his ready acquiescence in the suggestion by Fall that the latter undertake to consummate

an arrangement, whereby royalty crude oil might be exchanged for fuel oil and storage tanks (R. 279-80). And his policy of passivity was openly expressed in the policy letter of October 25, 1921, in which he declared that all leases and contracts should be arranged and consummated by the Interior Department; and that copies of the same should be furnished to the Navy Department only as a matter of information and record (R. 282).

Not only did Denby not attend any conference during the negotiations eventuating in the Mammoth lease, but also he never conferred with Fall touching that lease (R. 627-8). He took the position that the leasing of the Reserve was entirely out of his hands and that the entire matter was being handled personally by the Secretary of the Interior (R. 382, 389). He knew and desired that all discretionary powers under the Mammoth lease should be vested in Fall (R. 636). The signature of Denby was added to the Mammoth lease only as a last moment precaution (R. 644), and after Fall had signed on his behalf (R. 635).

Denby permitted Robison to prepare for his signature all important letters relating to the Naval Petroleum Reserves (R. 574, 583, 595, 617). Despite the testimony of Robison that he was in constant consultation with Denby concerning the leasing of Reserve No. 3 (R. 586-8, 590) and that Denby and himself worked over the rough and final drafts of the lease (R. 590, 595, 614), Fall on April 12, 1922, deemed it advisable and necessary that he should

write Denby a long explanatory letter, in which he carefully recited the terms and conditions of the lease and the circumstances surrounding its execution (R. 287-9). Added significance is given to this letter by the fact that this was the very day on which Denby is supposed to have signed the lease (R. 614).

When Representative Mondell visited Denby, on or about April 20, 1922, seeking information with regard to the executed Mammoth lease of April 7, 1922, the latter referred him to Robison as the one who was familiar with the lease and its provisions (R. 395). It was at this time that Senator Harreld received a letter from Denby stating that the Navy Department was not in a position to give the details of any leases on the Naval Petroleum Reserves executed after May 31, 1921, but that accurate details as to such leases could only be obtained from the Interior Department (R. 404-5).

It should here be pointed out that appellants give a wrong impression in quoting language used by the Court of Appeals with respect to the mere naked legality of what was done as if it were a fact finding that Denby took part in the negotiation and making of the lease. The Court of Appeals discusses the Government's contentions against the legality of the lease at pages 811-16 of the record. **It is not there dealing with the contentions concerning fraud at all.**

In this discussion of legality the Court of Appeals does indicate that Denby did take enough part in the making of the lease and contract to save them

from the condemnation that they were made by the Interior Department rather than by the Navy Department as required by law. Thus it is said (R. 815):

> "We conclude that enough control was exercised by the Secretary of the Navy through Admiral Robison to preclude a court from holding that the entire power granted by the Act of June 4, 1920, to the Secretary of the Navy had been assumed by the Secretary of the Interior."

But when it comes to the findings with respect to the negotiation of the lease and to the frauds committed by Fall, the Court of Appeals equally clearly finds that Denby was passive and did not have any personal part in the transactions. Thus the court finds (R. 819):

> "So far as he was concerned the idea of opening Teapot Dome as a whole had not been considered or conceived. He never met Sinclair prior to the time of the signing of the lease. His part seemed to consist merely in consenting to the plans and purposes originating with Secretary Fall. Seekers of information were all directed to Secretary Fall."

Again it is said (R. 820):

> "Secretary Denby seemed to have so little information concerning the leasing of Teapot Dome that Secretary Fall thought it necessary to write him a long letter of date April 12, 1922, explaining the same. The evidence shows it was also explained to him by Admiral Robison before he signed the lease on April 12, 1922."

On the same page the court uses the language that:

> "* * * **Secretary Fall, as to this matter, dominated Secretary Denby,** * * *."

Referring to the matter of the execution of the lease the court finds (R. 820)

> "There seems to have been doubt whether it was necessary for the Secretary of the Navy to sign at all."

In the Pan American case, this Court found that Denby knew the terms of the contracts and lease. Our contention in this case is that he was deceived as to the necessity for this lease from the standpoint of drainage, and as to the method of negotiation.

7. Fraudulent prevention of bids by responsible companies.

A significant badge of fraud is the manner in which the lease and supplemental contract were negotiated by Fall. They were awarded without advertisement and competitive bidding and responsible bidders were denied an opportunity to compete for them.

Despite the fact that the leases made on the adjoining Salt Creek field by competitive bidding at auction on June 15, 1921, had netted the United States the sum of $1,687,080 in bonuses (Pl. Ex. 12; R. 298-9), and despite the fact that many inquiries were received from parties seeking a lease on Reserve No. 3, Fall nevertheless decided that competition was neither necessary nor advisable; and consequently the leasing of the reserve was never offered publicly (pp. 42-3, 57, *supra*).

Not only was the entire Teapot Dome reserve leased to Mammoth without any semblance of competition, but responsible parties were denied an opportunity to compete for the lease. We have referred in detail to the Producers & Refiners Corporation (pp. 43-44, *supra*), to the Texas Company (pp. 44-50, *supra*), and to the Texas Pacific Coal and Oil Company (pp. 50-52, *supra*).

It is not a question whether the law required competitive bidding for the lease, but it is a serious question whether a government official mindful of his obligations and desirous of doing the best he could for his government, ought ever to have let a contract in the secret and clandestine way in which Fall negotiated this lease. The inquiry becomes more pointed when we consider the methods he adopted to evade dealing with others than Sinclair, whom he had obviously picked out as the person to whom he was going to give the lease irrespective of any considerations of the government's interest.

8. Fraudulent reservation of sub-leases on Teapot Dome by Fall.

The testimony is uncontradicted that Fall privately arranged with Sinclair for acreage in the Reserve for John C. Shaffer and Gerald Hughes. Neither of them had any placer mining claim on the Reserve (pp. 52-55, *supra*).

Counsel cannot justify the Shaffer deal by any argument that Shaffer had any right or claim of right in the Reserve. He was simply in the category of a

person who was desirous of getting a lease on the Reserve if leases were to be granted. Counsel make no reference whatever to the extraordinary testimony which shows without contradiction that Fall, for some reason undisclosed, had arranged with Sinclair to set aside certain acreage for Gerald Hughes, a lawyer in Denver, Colorado. This transaction in and of itself casts a sinister light upon the private and secret dealings of Fall and Sinclair.

We submit, moreover, it is no answer for counsel for appellants to say, as they do at pages 142-44 of the Mammoth Brief, that whatever may be said about the Shaffer transaction, it remains that Shaffer got no acreage in the Reserve. The testimony was offered to show secret and fraudulent understandings and negotiations between Fall and Sinclair which were inexplicable on any theory of open arms' length dealing by an officer of the government in the government's behalf.

If, as counsel allege, the testimony with regard to the Shaffer matter affords no ground for an inference that Sinclair and Fall dealt on terms of intimacy, then we ask what inference is to be drawn from such secret and private dealings between a government officer and a contractor with the government.

9. Studied effort to avoid covering proceeds of royalty oil into the United States Treasury.

Robison was familiar with the Act of Congress of August 25, 1914 (38 Stat. 708) which provided that if royalty crude oil was sold, the money had to be covered

into the United States Treasury as miscellaneous receipts and would not be available without an appropriation by Congress (R. 636, 654). This fact was discussed and explained by Robison to Fall, Denby, Bain and Sinclair (R. 589, 616, 637, 689). **Everybody understood that in order to prevent the money being covered into the United States Treasury a plan had to be worked out whereby royalty oil should be given as a consideration for the storage of fuel oil in tanks and the building of fuel depots therefor** (R. 637).

Fall, Bain and Robison all knew that it was bad business to exchange royalty crude oil for fuel oil in storage and that it would have been a better business proposition to commute the royalty crude oil into cash and then buy fuel oil storage with it (R. 616, 689). Fall felt so strongly about the matter that on April 12, 1922, he forwarded to Denby a draft of a proposed amendment to the Naval Appropriation Act of that year, which amendment would have permitted the sale of royalty crude oil and the payment of the cash proceeds thereof for storage facilities, thereby avoiding the double profit necessarily involved in the exchange of royalty crude oil for fuel oil in storage (Pl. Exs. 8 and 8A; R. 290-92). This proposed amendment was discussed by Denby and Robison and was discarded because the latter relied on Doheny's promise to bid on the Pearl Harbor project (R. 617). Bain testified that it was discussed and agreed that they had no authority to buy and sell (R. 689); that if the royalty crude oil were sold,

the money had to be covered into the Treasury as miscellaneous receipts (R. 689); and that he did not like the "certificate" feature of the Mammoth lease because he felt it looked too much like a sale (R. 673-4).

Appellants' counsel completely ignore the ulterior motive of the parties in adopting and using these oil certificates and also the admitted financial loss thereby entailed to the Government. Nor do they mention Fall's proposed amendment to the 1922 Naval Appropriation Act which would have authorized the sale of government royalty crude oil and the payment of the cash proceeds thereof for storage facilities (R. 290-2). Their argument in this respect is that if the oil certificates should be redeemed in cash, the transaction would be a lawful sale under the Act of June 4, 1920. Such argument not only evades the fraud issue but also disregards the declared intention of the parties that such oil certificates were to be solely used for fuel oil and storage facilities (R. 637).

The opinion of this Court in the Pan American case clearly establishes the illegality of such a performance.

10. The $230,500 Liberty Bond transaction between Sinclair and Fall.

(a) *Fall receives Liberty Bonds.*

The record shows clearly and without contradiction that for some years prior to 1922 Fall and his son-in-law, one M. T. Everhart, owned, in equal amounts, all of the $10,000 par value of capital stock of a cattle company known as Tres Ritos Cattle and Land Company (R. 534). The company was evidently in

a very bad way. Up to May, 1922, there had been borrowed from the M. D. Thatcher Estates Company of Pueblo, Colorado, by this cattle company $10,000, for which the estates company held the cattle company's note (R. 538). In addition there had been borrowed by Fall from the same estates company $15,000, for which the estates company held Fall's note (R. 538). In addition, there had been borrowed by Everhart from the estates company $83,000, for which the estates company held Everhart's notes and the collateral notes of the cattle company (R. 538). For these indebtednesses there was pledged with the estates company the whole of the stock of the cattle company, which, as above stated, belonged equally to Everhart and Fall (R. 534; 538).

It is equally clear and uncontradicted that on May 29, 1922, M. T. Everhart appeared in Pueblo with $230,500 par value of First 3½% Liberty Loan Bonds (R. 533; 538). Of these he delivered to the First National Bank of Pueblo $90,000 par value, with directions to keep the same safely for Fall, and with the statement that they belonged to Fall (R. 533). $140,500 of them he sold at par and accrued interest to the M. D. Thatcher Estates Company on that day and applied the proceeds, so far as necessary, to wipe out the indebtedness to the estates company of the cattle company, of Fall and of himself (R. 538 9). The balance of the consideration received by him after the liquidation of the indebtednesses to the estates company was distributed between the cattle company, Fall and Everhart in sundry sums

(R. 538-9). Of the $90,000 of bonds held for Fall by the First National Bank of Pueblo, $20,000 of them were deposited to the credit of the cattle company and the remaining $70,000 were subsequently remitted to Fall and by him sold to a bank in El Paso, Texas, and a bank in New Mexico (R. 435-38; 533; 535-36; 539-42).

There is no possible doubt or controversy as to the serial numbers of these bonds. The $140,500 of bonds sold to the estates company were entered upon its books by the man who received them and he produced his books and testified to the numbers thereof (R. 538). This was corroborated by the interest coupons deposited by the estates company and forwarded through the First National Bank of Pueblo to the Federal Reserve Bank at Denver, and thence to the United States Treasury. These coupons bear the same serial numbers as the bonds from which they were detached and the numbers correspond (R. 440-41).

With regard to the $90,000 par value of bonds delivered to Fall the coupons from the same were detached and forwarded by the First National Bank of Pueblo to the Federal Reserve Bank at Denver and thence to the Treasury. These bonds were traced to the clerks who handled them and the clerks were called and identified their letters and records and the coupons themselves were produced from the Treasury of the United States (Pl. Ex. 116; R. 544-46; Pl. Ex. 121; R. 440-41).

But more than this, as above stated, Fall himself deposited $20,000 of these bonds at the First National Bank of El Paso, Texas, in October and November, 1922, and the bond numbers were noted upon the deposit tickets by the clerk who was called and identified the transaction. The numbers on these $20,000 of bonds correspond with the numbers on 20 coupons forwarded as above from the First National Bank of Pueblo (Pl. Exs. 109-11; R. 435-38). As to $50,000 of said bonds, they were deposited by Fall in May, 1923, with the Exchange Bank of Carrizozo, New Mexico, and the numbers noted upon the blotter by a clerk who was called to identify his entries and to verify the transaction (Pl. Exs. 144, 146; R. 539-43). These bonds corresponded in number with 50 of the coupons taken therefrom and forwarded as above stated by the First National Bank of Pueblo to the Federal Reserve Bank at Denver (Pl. Ex. 116; R. 544-46). As to the remaining $20,000 of said $90,000 of bonds, the uncontradicted evidence is that Fall sold them to the First National Bank of Pueblo and that bank sold them through a broker in Pueblo to a New York brokerage house, together with sundry other bonds owned by the bank. In said lot of bonds thus sold by the First National Bank of Pueblo, the numbers of 20 thereof correspond with the numbers of the coupons of 20 of said $90,000 of bonds which had, as above stated, been collected by the First National Bank of Pueblo through the Denver Federal Reserve Bank (Pl. Exs. 114, 119; R. 533-37).

There is, therefore, throughout a double check from independent sources of the numbers of the whole $230,500 of Liberty Bonds.

(b) *Attempted concealment of the source of the Liberty Bonds.*

Of course Everhart knew the source of these bonds. The Government called him as a witness. He refused to testify on the ground that he might incriminate himself (R. 537). The court was convinced by argument of Government counsel that certain questions asked him could not possibly raise any question of self-crimination and he was ordered to answer (R. 537). After some shilly-shallying, Everhart took a fresh tack and made the statement that he was concerned as principal in the transaction in which the bonds were received and that he feared he might incriminate himself by giving any testimony about it (R. 537). The court sustained his plea of self crimination (R. 537-38).

Of course Fall knew where the bonds came from. He was not called by the appellants.

Of course if the bonds did not come from Sinclair, or if Sinclair had no connection with the transaction, he could have stated that fact and, if innocent, would have been only too ready to testify. He was present throughout the trial but was not called.

The Government, however, had made a careful and exhaustive search of the prior ownership of these bonds and offered in evidence facts elicited by that search.

(c) ***The Continental Trading Co., Ltd., was the source of the bonds.***

The evidence in this case demonstrates without contradiction and beyond doubt that on April 13 and April 17, 1922, the New York Agency of the Dominion Bank of Canada, purchased from three brokerage houses in New York City United States $3\frac{1}{2}$% Liberty Loan Bonds of a par value of $300,000 (Pl. Exs. 141-43; R. 487; 489; 493-95; 497-99; 502-03; 568). The Dominion Bank did not keep a record of the numbers of the bonds so purchased. The brokerage houses which sold them, however, and the trust company from whom certain of them were obtained, did keep records of the numbers of $250,000 of said bonds so sold and delivered to the Dominion Bank. The records, the custodians of those records, and in all but one instance, the clerks who made those records were called to verify the same and the records themselves were offered in evidence. Approximately $200,000 of the $230,500 of bonds which Everhart produced at Pueblo on May 29th are among the known numbers of $250,000 of bonds of the $300,000 lot so purchased by the Dominion Bank on April 13 and 17, 1922 (R. 435-38; 440-41; 533; 535-46).

But why or for whose account did the Dominion Bank purchase these bonds? The officers of the Dominion Bank supplied the answer to this question. They testified that they bought them for the account of the Continental Trading Company, Ltd. (R. 485-91), a Canadian joint stock company whose president was H. S. Osler, a Barrister of Toronto, Canada

(R. 504-05). They testified that some months prior thereto Mr. Osler procured the said Dominion Bank, New York Agency, to act as a sort of fiscal agent for the Continental Trading Company, Ltd.; that from time to time Dominion Bank received remittances of cash through New York banks from Sinclair Crude Oil Purchasing Company and Prairie Oil and Gas Company and that upon instructions from Mr. Osler said bank from time to time made remittances against the account of Continental Trading Co., Ltd., to Humphreys Mexia Company. The result of the difference between the receipts and disbursements for account of Continental Trading Company, Ltd., was a large cash balance to this account in said Dominion Bank, New York Agency (R. 485-87). From time to time, upon instructions of H. S. Osler, President of the Continental Trading Company, Ltd., the Dominion Bank purchased out of this cash balance surplus First 3½% Liberty Loan Bonds and took delivery of the same for the account of Continental Trading Co., Ltd. (R. 485-87; 489).

Pursuant to Osler's instructions in writing under date of April 11, 1922 (R. 486-87), Dominion Bank, New York Agency, purchased the said $300,000 of Liberty Bonds. On May 8, 1922, H. S. Osler called at the bank in person, took delivery of said $300,000 of bonds and receipted for the same as President of the Continental Trading Co., Ltd. (R. 487-88). In and around the month of May, 1922, Osler took down all told some $700,000 of these bonds (R. 487-89).

One's curiosity is aroused by such a peculiar method of business and when it is learned that in the period between February, 1922, and June, 1923, purchases and deliveries of such Liberty Bonds in excess of $3,000,000 were made, one's curiosity becomes sharper (R. 489).

When it is realized that no taxpayer is required to make any record of income received from Liberty Bonds and that they are therefore an even more secret and clandestine method of exchange than currency, one's wonder grows. When it appears from the record that the Continental Trading Co., Ltd., being a Canadian corporation and doing no business in Canada was required to file no returns whatever of its business in Canada and under the guise of a Canadian corporation elected to file no returns in the United States, one realizes even more fully that the transaction can be cloaked in utter secrecy so far as the corporation is concerned (R. 464; 481-85).

(d) *The genesis and purpose of the Continental Trading Co., Ltd.*

The answer to the curiosity aroused by the circumstances was supplied by the evidence in this record. Let it be understood at once that what is now to be detailed is detailed only and solely for the purpose of showing Sinclair's connection with the Continental Trading Company, Ltd., and of demonstrating that what Sinclair received from the Continental Trading Company, Ltd. (Liberty Bonds) was a ready and secret means whereby he could turn over property

to Fall without fear of detection. Let it be understood that the organization and purpose of the Continental Trading Company, Ltd., antedated any thought of Sinclair, so far as this record shows, of getting a lease on Teapot Dome. Let it be understood that the Continental Trading Company, Ltd., as such, had no connection whatever with Sinclair's dealing with the Government.

It remains to show what the Continental Trading Company, Ltd., was and how it operated. One A. E. Humphreys controlled two oil corporations, the Humphreys Mexia Oil Company and the Humphreys Texas Company, which owned large and valuable producing oil properties in Texas (R. 452). It is a fair inference that all of the large oil companies were anxious to get the production of oil from the Humphreys properties. As a result of some negotiation Humphreys was called to New York and there met H. M. Blackmer, Chairman of the Board of Midwest Refining Company (R. 442). This company is a subsidiary of the Standard of Indiana (R. 674; 676). The Standard of Indiana and the Sinclair Consolidated Oil Corporation, Mr. Sinclair's principal company, are equal partners in the ownership of the Sinclair Pipe Line Company and the Sinclair Crude Oil Purchasing Company (R. 153 54; 559 60; 676). The community of interest therefore between Blackmer, Sinclair and the Standard company is quite evident.

Mr. Humphreys came to New York in November, 1921, met Blackmer and a tentative deal was made

whereby Humphreys agreed to sell one-half of the production of his companies in Texas at $1.50 per barrel until there should be delivered under the contract 30,000,000 barrels of oil (R. 442-43; 452). When this arrangement had been made Humphreys sent for his attorney, ex-Senator Charles S. Thomas (R. 442; 452). Thomas came to New York, conferred with Humphreys, and then met at luncheon Humphreys, Blackmer, Sinclair and James E. O'Neil, President of the Prairie Oil and Gas Company (R. 442-43; 452). There was considerable discussion about the contract and it was finally suggested that in order to make it for an even amount it should be 33,333,333⅓ barrels (R. 433). There was a further discussion whereby Humphreys agreed that when all the oil had been delivered under this first contract at $1.50 per barrel, Prairie Oil and Gas Company and Sinclair Crude Oil Purchasing Company would continue to take one-half of the Humphreys production indefinitely, not at a fixed price of $1.50 per barrel, but at the posted field price current at the date of delivery, that is, at the market price paid in the field (R. 432-33).

On the following day, November 16, 1921, Humphreys and Thomas met, at Blackmer's room in a hotel in New York, Blackmer, Sinclair, R. W. Stewart, President of the Standard of Indiana, and James E. O'Neil, President of the Prairie Oil and Gas Company (R. 443-44, 452). After some discussion Senator Thomas indicated that he would prepare a contract covering the first transaction above

mentioned (R. 444; 452). He was told to make that contract to the Continental Trading Co., Ltd., as vendee of the oil (R. 444, 452). A question at once arose as to who the Continental Trading Co., Ltd., was,—Humphreys objecting that he would not make such a contract with a company of which he had never heard and whose financial ability he did not know. Humphreys stated that he would require some security or guarantee of this contract (R. 444; 452-53). Thereupon Sinclair and Stewart for the Sinclair Crude Oil Purchasing Company and O'Neil for the Prairie Oil and Gas Company stated that their companies would guarantee the contract on the part of the vendee (R. 444; 452-53). This was entirely satisfactory to Humphreys as he knew both companies and knew their financial ability. The contract was accordingly so drawn.

Blackmer stated that the President of the Continental Trading Co., Ltd., would be in New York on the following day to execute the contract on behalf of that company (R. 444).

Mr. Osler, a Barrister of Toronto, applied for the incorporation of the Continental Trading Co. Ltd., on November 16, 1921 (R. 463-76; 505). Its charter was granted November 17, 1921 (R. 463; 477). On November 17, 1921, Osler appeared and met the parties above mentioned in New York, bringing with him the seal of the Continental Trading Co. Ltd., and there executed the contract of purchase of oil at $1.50 per barrel above mentioned, from Humphreys (R. 445; 453). This contract appears in the record

at pp. 445-47. The guarantee of the vendee's performance, executed on that day, was executed on behalf of the Sinclair Crude Oil Purchasing Company "by H. F. Sinclair and R. W. Stewart for the Directors" and by J. E. O'Neil as President of Prairie Oil and Gas Company (R. 447-48). It is copied at pp. 447-48 of the record.

At the same time there was executed the second contract which the parties had negotiated whereby Prairie Oil and Gas Company and Sinclair Crude Oil Purchasing Company jointly agreed to take the Humphreys production after the first contract should have been fully fulfilled and provided said production was to be taken at the posted field price. Sinclair and Stewart executed that contract also for the Directors of the Sinclair Crude Oil Purchasing Company, but the proper officers of the company subsequently executed a copy thereof. This contract is copied in the record at pp. 448-51. Neither Sinclair nor Stewart was a director of the Sinclair Crude Oil Purchasing Company for whom they purported to act (R. 461); but, of course, they controlled that company because they were each respectively President of the Sinclair Consolidated Oil Company and Standard Oil Company of Indiana which owned the stock of Sinclair Crude Oil Purchasing Company half and half (R. 559-60; 676).

On the same day, November 17, 1921, the Sinclair Crude Oil Purchasing Company and the Prairie Oil and Gas Company jointly entered into an agreement with Continental Trading Co. Ltd., purchasing

in turn from Continental Trading Co. Ltd., the oil just purchased by it from the Humphreys Companies at an advance of at least 25c per barrel. The advance might be greater than 25c per barrel under the terms of that contract, but it could in no event be less (R. 454-56). By this contract they further assumed every obligation assumed by Continental Trading Co. Ltd., to the Humphreys Companies and indemnified and saved harmless Continental Trading Co. Ltd. from any damage or loss whatsoever by reason of that contract (R. 456). This contract is copied at pp. 454-56 of the record.

It stands admitted that the purpose and intent of this whole transaction always was that Sinclair Crude Oil Purchasing Company and Prairie Oil and Gas Company should run the gathering lines and take this oil direct from the Humphreys field, merely giving Continental Trading Co. Ltd. its profit in the transaction (R. 444; 455-56).

As a matter of fact the transaction was so arranged that Continental Trading Co. Ltd. was to pay Humphreys on the 15th of the month (R. 446); but was to receive its pay from Sinclair Crude Oil Purchasing Company and Prairie Oil and Gas Company on the 10th of the month (R. 456). Thus Continental would always before the 15th of the month have in hand the funds to pay Humphreys on that date as well as its 25c per barrel profit. It was not intended that Continental should, and in fact Continental did not do anything except collect and disburse once a month.

It should be added that the most extraordinary means were taken to conceal the personnel of the Continental Trading Co. Ltd. Under the Companies Act in Canada it is possible to organize a corporation which shall issue "share warrants" instead of issuing certificates of capital stock. These share warrants run to bearer. They have attached to them coupons for the respective dividends (R. 507-08; 525). Nobody by any inspection of any corporate or official record can discover who holds those share warrants. Such share warrants may be exchanged at the instance of the holder for certificates of stock, but it is the election of the holder and not the election of the corporation which causes such exchange to be made. It will thus be seen that there was no way possible for any outsider to discover who constituted the Continental Trading Co. Ltd. Osler testified and the record shows that there was no list of the stockholders (R. 464; 508). We shall refer hereafter to Mr. Osler's testimony more in detail.

It seems so obvious as hardly to need comment that this Continental Trading Company was rigged up by the men interested in this deal so as to enable them secretly and clandestinely to take a profit of 25¢ per barrel at the expense of their respective corporations. The corporations would pay at least $1.75 per barrel for the oil. The Continental Trading Co. Ltd. receiving that $1.75 would pay Humphreys $1.50. The difference or profit would be, and in fact was under the scheme, invested in 3½% Liberty Loan Bonds (R. 489) in the belief that no human

ingenuity could trace their receipt or disbursement. In order to put the matter one step further from discovery, the Continental Trading Co. Ltd. carefully abstained from having anything or doing anything in Canada (R. 463-64; 481-85) and had all of the remittances made not by check but by bank exchange in New York City through the Dominion Bank of Canada, New York Agency, which acted as fiscal agent for Continental and thus enabled Continental to get along without keeping any books of account whatever at any point.

(c) *Sinclair's connection with Continental Trading Co., Ltd.*

As above stated, Osler drew down $300,000 of Liberty Bonds of specified numbers on May 8, 1922 (R. 487-89). As above stated, on May 29, 1922, Everhart appeared in Pueblo with $230,500 of the self-same bonds (R. 533; 538).

In the light of these facts, the natural course for anyone to pursue would be to ask Osler what he did with the $300,000 of bonds. Government counsel therefore applied for leave to take Osler's deposition at Toronto. Leave was granted on September 4, 1924 (R. 116-19). Osler appeared before the commissioner and flatly refused to testify to anything, claiming that the matter was one of professional privilege. The commissioner directed him to answer. He persisted in his refusal. The matter was certified to the Canadian courts. Then it was discovered that Osler was making technical objections to the form

of the commission, etc. To meet this Government counsel applied for a new commission to comport with what Osler contended were the technical requirements of Canadian law. The new commission was granted on October 18, 1924 (R. 116-19). Osler was again called.

This time he made long evasive statements calculated to throw all the doubt possible upon Sinclair's connection with Continental Trading Co. Ltd., without saying that Sinclair had no connection with it. When categorical questions were put to him he took refuge in his alleged claim of professional privilege. It was developed that this matter was purely a matter of business, that he was the president of the company, that all of its officers were clerks in his employ, that it had no books or records, that it had gone out of business, that he was under the seal of secrecy not to disclose either who his original client was in the matter or who that original client's associates were. All of this occurred only when objection had been made to the original commission and after a new commission had been issued to overcome his technical objections (R. 504-33).

The commissioners, upon demand of Government counsel, ordered him to answer the questions and refused to recognize any professional privilege attaching to him in his purely business capacity as president of the corporation. Osler refused again to obey the commissioners' orders. The matter was taken into the courts. Canadian counsel were retained and argued the matter before the courts. Upon argu-

ment, the court of the first instance on December 13, 1924, sustained the government's position and ordered Osler to answer (R. 205-6). An appeal was taken from this order. On account of the delay caused by Osler's contumacy the Trial Court at Cheyenne was requested to continue the case to enable counsel to get Osler's testimony. The court on December 26, 1924, did postpone the trial for this purpose, saying that counsel were entitled to have this testimony (R. 133-38).

The hearing on said appeal was heard on February 9 and 11, 1925 (R. 206); but the decision on appeal was delayed so that it did not appear to Government counsel that Osler's testimony could be taken in time to be presented at the trial, which was then fixed for March 9, 1925. Accordingly, on February 26, 1925, counsel applied to the court for a continuance of the cause (R. 138-99). The Trial Court completely reversed its former position and, having before it exactly the same matters it had in the previous December, now decided that nothing material could be obtained from Osler, refused to continue the case and ordered the government to go to trial on March 9 (R. 199-205). On March 11 the Court of Appeal of Ontario affirmed the decision below ordering Osler to give the testimony (R. 206). Before that time Osler had left Canada and was absent from Canada in foreign parts until sometime after the conclusion of the trial (R. 139; 184; 207).

Early in February, 1925, in a final effort to make some party to the negotiations of the Continental

Trading Co. Ltd., contract at New York tell the story Government counsel took out letters rogatory to take the testimony in France of H. M. Blackmer and James E. O'Neil, who, for some unaccountable reason, were both sojourning in France for indefinite periods (R. 546-48). A special messenger was sent to France with the commission; Blackmer and O'Neil were brought before a French court and the interrogatories attached to the letters rogatory were propounded to them and they answered by sepulchral silence (R. 546-48). Under the law of France they need give no answer unless they chose to do so, and they chose to make no answer whatever. Accordingly the letters rogatory were made up and returned and opened at the trial in Cheyenne, disclosing nothing. (R. 546-48.)

Robert W. Stewart, the only other person present at the consummation of the Humphreys-Continental Trading Co. deal, and unaccounted for, was under subpoena for the trial of the case at Cheyenne January 6, 1925. When a continuance was obtained to March 9, 1925, a new subpoena was at once issued for him. For some unaccountable reason it was not served. When counsel learned that it had not been served upon him a new subpoena was issued for him and this new and second subpoena was not served upon him for the reason that he had left for parts unknown and did not return to America until after the trial had closed.

The story is not complete until it is stated that in May 1923 the Continental Trading Co. Ltd., which

had then received over $2,000,000 profit on its in-between contract and which stood still to realize over $6,000,000 more profit (R. 461), suddenly sold and assigned all its rights under its contract with the Humphreys companies to Sinclair Crude Oil Purchasing Company and Prairie Oil and Gas Company for the paltry sum of $400,000 (Pl. Ex. 126; R. 457-60).

Counsel for appellants give many reasons, quoting Mr. Osler, why this was perfectly proper and easily understood. To us these reasons are not convincing. If all the other arguments appellants' counsel advance as to why this was a perfectly fair contract and arrangement and as to why Sinclair, Stewart and O'Neil had no interest with Blackmer in the Continental Trading Co. Ltd., are sound, then it is indeed hard to understand why Blackmer, who by his superior skill had dealt these other gentlemen off the board to the extent of $8,000,000 profit, should suddenly repent and sell the remaining $6,000,000 of that profit to the companies of Sinclair, Stewart and O'Neil.

The contract of assignment is copied in the record at pp. 457-60. The testimony of Mr. Phillips, President of the Sinclair Crude Oil Purchasing Company, who alleges that he negotiated this assignment with Osler, will be found by the Court most interesting (R. 457; 460-62). The real truth is, as disclosed by that testimony, that Phillips was a mere tool and was ordered to go to New York and buy the Continental Trading Company contract for $400,000.

He could not even remember who told him to go and buy it at that price (R. 461).

Shortly after this assignment the affairs of the Continental Trading Company, Ltd., were wound up (R. 480-81); and all records of the Company were subsequently destroyed in Mr. Osler's office (R. 506-07).

Of course anyone of the parties who kept their silence could by a word have cleared Sinclair of all connection with the matter. This applies to Everhart, Blackmer, O'Neil and Osler. It applies with double force to Sinclair. There is no suggestion that any of the other gentlemen concerned in the Continental Trading Co. Ltd., ever had any relations or dealings with Albert B. Fall. The suggestion that Mr. Everhart gratuitously should have gone to New York in May 1922 and picked up on the market $230,500 of Liberty Bonds for the account of Tres Ritos Cattle and Land Company, or Fall, or himself seems hardly admissible. The only man who at that time had dealings of great financial moment with Albert B. Fall as representing the government was Sinclair. If the transaction were an innocent one why did Everhart claim privilege against self-crimination? Why did all the others remain silent as the tomb?

We submit that the Court of Appeals was right in finding that the bonds in the possession of Everhart and used in part for Fall's benefit were received by Everhart either from Sinclair or the Continental Trading Co., Ltd.; and in being satisfied with Sin-

clair's connection with the Continental Trading Co., Ltd., and with the acquisition of the 3½% Liberty Bonds by Everhart and Fall (R. 846-7).

We strenuously urge that the long, laboring, technical aguments contained in appellants' brief in an effort to convict the Court of Appeals of having piled inference on inference is wholly beside the point. The Court of Appeals drew several plain, common-sense inferences from uncontradicted and unexplained facts. This we contend it had the right to do, and we further contend that for a court to shut its eyes to the plain implication of this trail of secrecy, chicanery and corruption would be to bring the courts into disgrace and, as the Court of Appeals puts it, would make of judges something less than men.

11. Sinclair admittedly delivers an additional $25,000 of Liberty Bonds to Fall.

We are not yet done with the dealings between Sinclair and Fall, nor have we concluded the demonstration that Liberty Bonds were favored currency when these two men were dealing with each other. We concede that a transaction by way of gift subsequent to an officer's leaving the government employ does not necessarily spell corruption between that official and the donor of that gift, but when what we are about to relate is added to what we have already outlined the transaction about to be detailed acquires new and startling significance.

Zevely testified that on behalf of Sinclair he went

to Three Rivers, New Mexico, in order to ask Fall to go to Russia as Sinclair's counsel in regard to certain controversies or applications for oil leases in Russia (R. 568). Zevely says he went way out there because he did not want to write Fall about it (R. 568-69). Fall finally stated that he could probably go, but that he could not go as early as Sinclair wanted to go and would have to follow him (R. 568). Fall explained, so Zevely says, that he was about to buy one or two small ranches in New Mexico and would need some money (R. 568). As a result of the discussion, it was arranged that Sinclair should let Fall have the money (R. 568).

On May 26, 1923, on a street in New York, Sinclair told his private secretary, Wahlberg, in the presence of Zevely "Wahlberg, Mr. Zevely may want $25,000 while I am gone. If he does, you give him Liberty Bonds for that amount" (R. 551). This conversation is corroborated by Zevely (R. 568). A week or ten days later Zevely asked Wahlberg for the bonds and the latter turned over to him $25,000 of U. S. Liberty First 3½% Bonds (R. 551). These bonds were taken from Sinclair's box but their numbers were not noted (R. 551). Fall was then in Washington.

About this time Fall wrote the First National Bank at El Paso (R. 114) saying that he was arranging to have $25,000 of Liberty Bonds forwarded from New York City, which were to be sold and credited to his account and that his son-in-law might draw against the proceeds not to exceed $2,500 (Pl. Ex. 144; R. 549). On June 5, 1923, Zevely wrote a cryptic letter

(Pl. Ex. 148; R. 549-50) to the First National Bank at El Paso saying he was forwarding "a package" to the bank which was the property of Albert B. Fall and asking the bank to acknowledge receipt. The bonds arrived and the bank wrote Zevely acknowledging the receipt of the "package" (Pl. Ex. 160; R. 550). The bonds were sold for $25,671.36 and the proceeds credited to Fall, and for practically a year thereafter they remained intact in Fall's bank account. They were not, in fact, drawn out for any such financial transaction as Zevely insists upon (R. 548-50; 568).

Before the Senate Committee on Public Lands and Surveys Zevely produced a note for $25,000 from Fall to Zevely (R. 568-70). He stated that he got this note from Fall to evidence the transaction after Fall returned from his European trip with Sinclair (R. 569). He did not say how long after. It is admitted that Fall has paid neither interest nor principal on this note (R. 569). Zevely says he holds the note in trust for Sinclair (R. 569). It stands admitted that no receipt was ever given to Sinclair for the bonds thus delivered to Zevely and sent to Fall (R. 569). It also stands admitted that Fall received a considerable sum in cash to cover his expenses and disbursements on this trip before he left for Europe (R. 569). Zevely also testified that the bonds were sent to Fall as a loan and not as a fee (R. 569).

What shall be said of this transaction when it is put beside the $230,500 transaction? What is said about it? Sinclair has not a word to say about it.

Fall has not a word to say about it. No court would ever have heard of it had it not been for the Senate committee's investigation. We submit that Judge Kennedy, the Trial Judge, was over generous in his characterization of these bond transactions as follows:

> "It may be admitted that the transaction arouses suspicion, but further than this the court does not feel justified in going toward a finding in favor of plaintiff, in view of the principles of law announced. This court feels that it must be left to some higher court to find from the evidence what seems to be fatal missing links or to extend the principles of law so as to cover a situation as it here apparently exists.
>
> "The other collateral transaction is the transfer of $25,000 in bonds from Sinclair to Fall in June, 1923, hereinbefore referred to. This may be regarded as a suspicious circumstance, but having taken place long after the transaction which is here challenged and the circumstances being explained, it is quite largely removed from the category of a fraudulent transaction in this suit" (R. 262).

He adds this bland comment, to which we can hardly agree:

> "It was done openly without any apparent attempt to conceal it" (R. 262).

The matter thus being left to a higher court, the Court of Appeals did not feel the same generosity towards the "open" and fair attitude of the parties to these transactions, but felt compelled to say (R. 838):

> "The entire transaction * * * bears the earmarks, either of a swindle of the stockholders * * * or a scheme to create a fund to be used in the way the Government claims the profits of the Continental * * * were in part used, viz., for a sinister and unlawful purpose or both."

And with regard to the Zevely "loan" the court says (R. 840):

> "Zevely's explanation of this affair is weak, wholly unsatisfactory, and evidently born of the exigencies of the situation."

D. THE LEGAL SUFFICIENCY OF THE PROOFS OF FRAUD AND CONSPIRACY.

1. The badges of fraud and conspiracy.

The foregoing enumeration of proved facts may be resolved into the following badges of fraud and conspiracy:

1. The policy of conserving the oil in the ground as long as possible, and of making only protective leases for offset purposes, was changed to one of exploiting the whole Reserve.

2. The policy of leasing only pursuant to advertisement and competitive bidding was changed to private negotiation.

3. In the private negotiations with Sinclair, competition for the lease, for the purchase of the royalty oil and for the erection of storage tankage was eliminated.

4. The quit-claiming of placer claims known to be invalid was made a condition precedent to a lease, and only Sinclair was given any practicable opportunity to secure the claims.

5. Applicants other than Sinclair for leases were told no leasing was contemplated or, as in the case of Beaty and Helms, were not given information on which a comparable bid could be made or time in which to make a bid.

6. Newspapers, the general public, senators and congressmen were denied information and affirmatively misled to avoid competition and opposition to the plan.

7. Negotiations were so shrouded with secrecy that even departmental subordinates did not know what was being done and did not know of the change in policy.

8. Subleases were clandestinely promised to two persons desirous of territory in the reserve .

9. The possibility of drainage was exaggerated and used as a justification for the lease, but not in good faith.

10. After doubts as to the legality of the plan were expressed by eminent attorneys, submission of the question to the Attorney General or Solicitor for the Interior Department was studiously avoided.

11. The lease was drafted in secrecy in the office of Sinclair's attorney.

12. Fall dominated the negotiations leading up to the making of the lease.

13. Sinclair bribed Fall with $230,500 worth of Liberty Bonds.

14. Neither Sinclair nor Fall were called by appellants to testify. Everhart claimed privilege against self-incrimination. Other witnesses with knowledge of important facts refused to testify.

15. Sinclair got a lease estimated to be worth in profits to his company over $33,000,000.

2. The test of the sufficiency of the proof of fraud.

Let us contrast the facts and circumstances of this case with the standard of action required upon the part of officers of the Government and those dealing with the Government. A public officer is held to the highest standard of good faith and good morals in all his transactions. He is not permitted to act from any motives other than the welfare and advantage of the Government. If motives of a private or a personal nature sway him, or if he is influenced by personal favoritism and offers preferential treatment to his friends, such action is immoral, reprehensible and renders voidable the transactions to which he thereby purports to bind the Government.

Persons dealing with a government officer are held to an equally strict standard of morality. They are affected with knowledge of the limitations upon the powers of a public officer and may not benefit in case the public officer exceeds his powers. They may

not do anything to influence the public officer to violate his duty to the Government. If they induce the public officer to act or merely know that he is acting from personal motives or from a desire to favor them and give them preferential treatment, they cannot enforce a contract so made. Personal solicitation which results in preferential treatment constitutes corruption and collusion, rendering voidable contracts made as a result of it.

Crocker vs. United States, 240 U. S. 74 (1915);
Hume vs. United States, 132 U. S. 406 (1889);
Garman vs. United States, 34 Ct. Cls. 237 (1889);
Washington Irrigation Co. vs. Krutz, 119 Fed. 279 (1902) (C. C. A. 9).

These cases were cited and relied upon by this Court in *Pan American Pet. & Trans. Co. et al.* vs. *United States.*

There is a marked contrast between the standard set up by the authorities and the negotiations in the present case. Personal favoritism, preferential treatment and evidence of corrupt motives crop out at every stage of the transactions.

If Sinclair knew or reasonably suspected that in awarding the contract to his company, Fall was actuated by any motives other than the procurement of the greatest advantage to the United States and the giving of equal opportunity to every would-be contractor, the resulting contract is fraudulent and unenforceable.

The collusion between Sinclair and Fall taints the entire transaction and neither the Mammoth Oil Company, nor any of the other appellants in this case is entitled to receive any benefit therefrom. We contend that the evidence in this case is ample to warrant the conclusion of corruption and fraud.

The particular type of fraud with which we are concerned in the present case is collusion between an agent and a third party dealing with that agent. The fraud consists of improper motives upon which the third party induces the agent to act and as a result of which the agent does act in whole or in part. This is a different type of fraud from that which exists when false representations are made by one party to another upon which the second party relies and which are not in accordance with the truth.

In fraud arising from false representations the representation is an objective fact, the proof of which is within the knowledge of the injured party. The true state of facts is also capable of objective proof, which proof it is usually not difficult to obtain. The only remaining element of proof necessary to establish the fraud is the knowledge of the falsity of the representation; and this can be established satisfactorily by proof that the person making the representation was familiar with the true state of facts at the time the false representation was made. It is clear that fraud of this type is more easily capable of proof than is fraud involving no objective representations. **It is this second type of fraud with which we have to deal in the present case.**

The gist of fraud that consists solely in collusion is the inducing to act on the one side and the action on the other side from improper motives. Most of the dealings take place between the conspirators who have a common interest to continue to conceal their actions and their motives. There are no representations to the injured party which can be laid hold of as a basis of objective proof. **The injured party must make up his proof out of a chain of circumstances which taken as a whole will show that the conspirators acted from improper motives.**

It is a very rare case when some one has overheard the conspirators or has been in any position where direct evidence can be obtained of their improper dealings with each other. This distinction is important because all proofs adduced should be judged in the light of proof that is possible. Legal pronouncements with regard to the kind and degree of proof required in a case of false representations should not be indiscriminately applied to a case in which the fraud consists of collusion.

When the proofs in the present case are examined in the light of proof that is reasonably possible, they are seen to be clear and convincing. The primary facts proved are substantially uncontradicted. There is no conflict in the testimony of witnesses as to the facts in evidence, nor is there any question as to the credibility of the Government's witnesses. The ultimate facts result from inferences arising upon the uncontradicted facts in evidence. **Those inferences depend principally upon the common sense knowledge**

of the motives and actions of men in circumstances like the present.

In this case, where only circumstantial evidence is possible, what principles shall guide the Court in making the inferences of ultimate facts? The Government contends for one set of inferences and the appellants contend for another. It is not necessary in this case, any more than it is in any other civil case, that the fraud should be established beyond a reasonable doubt. It is merely necessary that the court should be of the opinion that a reasonable man would infer from the facts proved that the transaction was fraudulent. These principles for which we contend are supported by authority.

Rea vs. Missouri, 17 Wall. 532, (1873).

The action was upon a bond which an execution plaintiff had given to indemnify the sheriff against the seizure of goods. The goods were levied upon as the property of Fuller and one Hayes laid claim to them. The position of the execution plaintiff, who was the defendant in the case, was that the title to the goods though in the name of Hayes was beneficially in Fuller and that the ostensible title had been placed in Hayes in order to prevent the creditors of Fuller from reaching the goods. This Court held that the court below, in its instructions to the jury, erroneously stated the law with regard to the strictness of proof of fraud in the case before it. At page 543, Justice Bradley, speaking for the Court, said:

"To establish fraud, it is not necessary to prove it by direct and positive evidence. Circumstantial evidence is not only sufficient, but in most cases it is the only proof that can be adduced. It was not necessary in this case, for the defendants, in order to maintain the issue on their part, to prove by direct and positive evidence, that Fuller had a secret trust or property in the goods. **It was sufficient if they proved such facts and circumstances tending to that conclusion as might reasonably induce the jury to believe that he had such trust or property.** The sufficiency of such circumstantial evidence was not, in our judgment, properly presented to the jury; but, on the contrary, the manifest tendency of the charge was to give them the impression that evidence of a more positive and direct character was required."

Glaspie vs. Keator, 56 Fed. 203, (1893) (C. C. A. 8).

Keator and Son sued below to recover damages for collusion between their agent St. John and Glaspie, who they alleged colluded to misrepresent the value of certain timber lands and thereby fraudulently to induce Keater and Son to purchase them. The court upheld a verdict for the plaintiff below against the contention that there was no evidence of fraud in the case. At page 205 the court said:

"* * * And we also think that there was proof of some facts and circumstances from which a jury might legitimately infer that Glaspie, the plaintiff in error, had acted in concert with St. John, and had knowingly aided and

abetted him in said scheme. In this class of cases, direct proof of a fraudulent intent or a fraudulent conspiracy is not to be expected, because such proof is rarely obtainable. Fraud is generally established by circumstances, and it very frequently happens, in cases like the one in hand, that slight circumstances will warrant important inferences."

Drake vs. Stewart, 76 Fed. 140, (1896) (C. C. A. 8).

Here suit was brought for a conspiracy between Stewart, the Marshal of Jackson County, Missouri, and one Bloss to detain plaintiff illegally in jail without bail. There was evidence that Bloss had seen Stewart before the arrest was made and that Bloss had prevented the plaintiff from getting in touch with a Justice of the Peace before whom a bail bond could be executed. Finally when a bond was executed and was presented to Stewart's deputies they refused to accept a bond. The court, speaking through Judge Sanborn, held that the facts constituted sufficient evidence of conspiracy to go to the jury. At page 144, Judge Sanborn said:

"• • • The fact that Stewart testified that he did not know who the parties to be arrested were, or upon what charge they were to be arrested, and that he found out nothing about it until the next morning, has not escaped our attention. The acts and the effects of the acts of a defendant often point to the truth as unerringly as his testimony, and this testimony of the defendant must be considered by the triers of the

fact in the light of the surrounding circumstances, and the acts of his deputies. In view of the legal presumption that these deputies received their instructions from their principal, and were acting by his command; in view of the fact that Bloss thought it necessary to the success of his plan that he should have a conversation with Stewart, in which he notified him that parties were to be arrested that evening, and that no straw bond should be taken, before he entered upon the execution of his enterprise; and in view of the significant fact that this conversation seems to have had the exact effect that the joint assent of the minds of Bloss and Stewart to the execution of the former's plan would have had,—we are unwilling to say that reasonable men might not fairly draw the inference that Stewart consented to this enterprise, and gave the instructions to his deputies to take no bonds, in order to assist in its prosecution. This question should have been submitted to the jury."

Drennen vs. Southern States Fire Ins. Co., 252 Fed. 776, (1918) (C. C. A. 5).

A suit in equity was brought by the receiver of the American Mortgage and Loan Company against the Southern States Fire Insurance Company and others on the ground that various common officers and directors of the two corporations had so conspired together and with others that the assets of the corporation for which plaintiff was receiver had been fraudulently diminished. The facts were exceedingly involved and the proof consisted of a long series of complicated financial transactions, no one

of them necessarily fraudulent in itself, but many of them open to suspicion. The appellate court reversed the district court on the ground that a case of fraud warranting equitable relief had been made out. At page 793, the court said:

> "Appeals are made to the proposition that fraud must be proved, and not presumed. Fraud must be proved. So must any other fact relied upon for judicial action. That fraud is charged, however, is no reason for suspending the rules of logic in the administration of the law. If facts are established from which an inevitable inference is to be drawn, the conclusion will not be rejected because the conclusion is fraud."

Cases to the same effect are:

> **Attorney General vs. Pelletier, 240 Mass. 264, 312, 314, (1922);**
> **Lumpkin vs. Foley, 204 Fed. 372, 381, (1913) (C. C. A. 5);**
> **Ware vs. United States, 154 Fed. 577, 580, (1907) (C. C. A. 8);**
> *(Certiorari denied* 207 U. S. 588);
> **Castle vs. Bullard, 23 How. 172, 187, (1859).**

We have shown that a high standard of morality, fairness and good faith is required on the part of government officers. We have seen that those dealing with government officers are held to an equally high standard of fairness, morality and good faith. We have shown that the evidence in this case proves collusion, corruption and fraud in the execution of the lease and contract in issue.

We have pointed out in our statement of the case that appellants seek to convict the Court of Appeals of error by alleging that that court placed its decision wholly and solely on the ground of bribery. We have pointed out from the record how erroneous is this position of appellants. We again repeat that there is ample evidence of fraud and collusion between Fall and Sinclair in this case, if no word of testimony had ever been introduced concerning the bond transactions. By this statement we by no means admit that the proofs adduced concerning bond transactions between Fall and Sinclair were irrelevant. Nor do we admit for one moment that that proof is not competent to move the mind of a chancellor and should not be effective to move his mind to find just what the Court of Appeals did find from that evidence, to wit, that Sinclair paid these bonds to Fall as a bribe. On the contrary, we aver that that evidence was competent and persuasive, and as we have heretofore argued, any court which refused to give it weight and to base a decision upon it would have to do so upon the theory that courts are not entitled to draw reasonable inferences from undisputed facts.

3. The silence of Sinclair is evidence of fraud.

The Government has contended in both the courts below, that the suspicious circumstances which it proved derived additional weight from the failure of Sinclair to take the stand. The Trial Judge admitted the principle that a party or an agent of a party who has facts peculiarly within his knowledge, and who

fails to take the stand and testify to those facts, thus creates the inference that if disclosed they would tell against him heavily (R. 261).

The Trial Court, however, asserted that there were no facts in this case which were laid at the door of Sinclair (R. 261), and that the rule was therefore inapplicable. The Trial Court in this connection discusses the Continental Trading Company transaction, but fails entirely to mention the many curious and vital personal transactions between Fall and Sinclair which occurred in the negotiation of the lease and contract. These we have heretofore detailed, and we shall not advert to them again in this section of the argument.

The Trial Judge further sought to escape the application of the principle by restricting it to cases where sufficient proof has been introduced to sustain a *prima facie* case without the indulgence of the inference (R. 261). We contended in the Court of Appeals that any such restriction is erroneous and illogical. The Court of Appeals agreed with this view and held that the silence of Sinclair was an important fact in the case (R. 842-45).

We submit that it cannot be otherwise. If by *prima facie* is meant a case sufficient to warrant a decree in favor of plaintiff, then no inference need ever be drawn from silence. By hypothesis a case is made out without the inference. If on the other hand *prima facie* means something less than the degree of proof necessary for a decree, but means something more than mere suspicion, which the Trial Court admitted

is present in this case (R. 262), then we have a metaphysical distinction without definiteness of application, and which sets no standard of practical availability to aid a trier of facts. We submit that the trier of facts should examine the whole case and weigh the proofs with reason and common sense, rather than with metaphysical refinements. This course is the course which the Court of Appeals followed.

The silence of Sinclair is a fact in this case. It is a fact to be considered not only in connection with The Continental Trading Company transaction,—but also in connection with the negotiations for the lease and contract. Sinclair's silence is to be weighed in connection with his visit to Fall's home at Three Rivers, at the end of December, 1921, and with his curious appearance on the scene as the man of opportunity just prior to his offer of February 3, 1922.

It is to be weighed in connection with his undue intimacy with Fall as further revealed by their many private conferences, their private "deals" over acreage for Shaffer and Hughes and their private arrangement for the purchase and tender of the Pioneer and Belgo placer mining claims.

The silence of Sinclair must be weighed in connection with the unusual and unique character of the entire negotiations between Fall and the man with whom he, as a government official, could deal in any honest way only at arms' length.

Finally, but coincident with the unusual and suspicious chain of other circumstances, is Fall's

proved accession of wealth from a source, which reasonably narrows down to less than half a dozen men, of whom Sinclair was the only one shown to be then having dealings of any sort with Fall.

The weight to be given to the silence of a party to a cause is a matter of common sense rather than the result of a metaphysical concept. If no suspicious facts are proved, obviously no adverse inferences arise from the silence of a party. **In direct proportion as the number and curious coincidence of suspicious facts increase, so also increases the weight to be given to a party's failure to explain such of those facts as are peculiarly within his control and knowledge.**

Judged by this common sense standard there is much in the present case calling for an explanation from the chief actor therein on the part of the appellants. The failure of Sinclair to take the stand and offer an explanation is a circumstance which colors the other circumstances of the case. The trier of facts should realize that honest men accused of fraudulent and criminal practices yearn to vindicate themselves. In reaching a decision as to the motives that actuated Sinclair and Fall, the Court of Appeals gave that weight to the silence of Sinclair which from its experience as to the motives of mankind, and with regard to the circumstances of this case, such silence merits.

The courts adopt the common sense theory of the inference to be drawn when a party refuses to produce testimony that is peculiarly within his control.

Bilokumsky vs. Todd, 263 U. S. 149, (1923).

Plaintiff had been examined, as provided by statute, in deportation proceedings under a warrant of the Secretary of Labor. When questioned as to alienage he stood mute and would not answer. Thereupon a prior statement made by him to an inspector of immigration was introduced in evidence as tending to show his alienage. After an order for deportation, plaintiff brought *habeas corpus* proceedings, which resulted in a denial of the writ. Upon appeal to this Court, the District Court was affirmed. The appellant contended that the statement was obtained in violation of his constitutional right against incrimination and unreasonable searches, etc. Except for this illegal evidence, plaintiff contended there would have been no evidence on the essential issue of alienage, as to which the burden of proof was with the United States.

This Court held that even granting the foregoing premises, there would have been sufficient evidence of alienage through the fact that the plaintiff had stood silent when interrogated.

> **"Conduct which forms a basis for inference is evidence. Silence is often evidence of the most persuasive character"** (citing Runkle *v.* Burnham, 153 U. S. 216, 225; Kirby *v.* Talmadge, 160 U. S. 379, 383) (p. 153).

Bilokumsky vs. *Todd* has been cited by this Court with approval in United States *vs.* Commissioner of Immigration, No. 111, October Term, 1926, not yet reported. In that case Mr. Justice Stone cited with

approval the language of this Court delivered by Mr. Justice Brandeis in the Bilokumsky case.

Runkle vs. Burnham, 153 U. S. 216, (1894).

Suit was brought upon a contract which had been made by defendant's alleged agent and which plaintiff asserted the agent had authority to make at the time he purported to execute it. There was a question in the case as to whether an old power of attorney was still in existence and whether, if not, it had been revoked by a new one. Runkle, the defendant, failed to take the stand himself, or to offer any testimony on this issue. This Court affirmed a judgment for the plaintiff. Justice White, in delivering the opinion of the Court, said at pages 225-6:

> "• • • If the new power of attorney was sent, and revoked the one relied on here, Runkle or his attorney could have dispelled all doubt by offering it in evidence, or by testifying as to its contents. **Their silence must necessarily make against them on the question of revocation.** Mansfield, *J.*, in Holdane v. Harney, 4 Burr, 2484, 2487. The doctrine that the production of weaker evidence, when stronger might have been produced, lays the producer open to the suspicion that the stronger evidence would have been to his prejudice was expressly adopted in the case of Clifton v. United States, 4 How. 242."

Pennsylvania R. R. Co. vs. Anoka National Bank, 108 Fed. 482, (1901) (C. C. A. 8).

An action was brought against the Pennsylvania R. R. Co. for the loss of goods in transit. The

goods had been transported over the line of the Pennsylvania as far as Baltimore, but from Baltimore they were transported over the Philadelphia, Wilmington and Baltimore Company's line, and it was while in the hands of that company that the goods were lost. Plaintiff introduced a large mass of circumstantial evidence to show that the Pennsylvania R. R. Co. was liable for the loss because of its relations with the Philadelphia, Wilmington and Baltimore Company. Defendants introduced no testimony as to what the relations were. The court held that this failure was to be considered along with the other evidence in the case. At page 486, the court said

> "* * * The defendant company, of course, knew exactly the relation it sustained to the Philadelphia, Wilmington & Baltimore Company, and, if it was not such as the mass of testimony introduced by the plaintiff strongly tended to show it to be, it was open to it to produce convincing evidence of the fact, and show precisely what the relation was; and, not having done so, every inference warranted by the evidence may justly be indulged against it. Where the evidence tends to fix a liability on a party who has it in his power to offer evidence of all the facts as they existed, and rebut the inferences which the proof tends to establish, and he refuses to offer such proof, the natural inference is that the proof, if produced, instead of rebutting, would support the inference against him."

Missouri K. & T. Railroad vs. Elliott, 102 Fed. 96, (1900) (C. C. A. 8).

(*Affirmed without opinion* 184 U. S. 695, 1901.)

Action for death of railway employee in a head-on collision. Plaintiff sought to show that defendant railroad had issued conflicting orders as to the movement of the two trains. Defendant failed to produce upon demand the train time sheet, or original dispatcher's record. Plaintiff, therefore, put in secondary evidence as to these conflicting orders. After verdict and judgment for plaintiff, defendant appealed and assigned as error the fact that the secondary evidence sought to be introduced was incompetent and insufficient to sustain the judgment. The court affirmed, holding there was no error in giving credence to the evidence introduced, **particularly as defendant had failed to produce available evidence, and thus given ground for a presumption that if such evidence had been produced, it would have supported plaintiff's case.** The court said (p. 102):

> "It is a well-settled rule that when the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence, which from its very nature must overthrow the case made against him, if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice and support the case of his adversary. 'It is certainly a maxim,' said Lord Mansfield, 'that all evidence is to be weighed according to the proof which it was in the

power of one side to have produced, and in the power of the other side to have contradicted.' Blatch v. Archer, Cowp. 63, 65."

Glaspie vs. Keator, 56 Fed. 203, (1893) (C. C. A. 8).

The Court remarked upon the fact that the defendant was not called as a witness to refute any of the allegations of fraud (p. 206), **and stated that this was a matter to be considered along with the other evidence in the case.**

Hansel vs. Purnell, 1 Fed. (2nd) 266, (1924) C. C. A. 6).

(*Certiorari denied* 266 U. S. 617)

This was a suit in equity in which the relief prayed for was based upon a charge of fraud. The proof of fraud rested upon circumstantial evidence and there was considerable conflict in the evidence introduced. The Circuit Court of Appeals felt that the failure of the defendants, Benjamin Purnell and his wife Mary, to testify was a circumstance to which considerable weight should be attached. At page 273 the court says:

"* * * In addition to the testimony actually heard by the trial court, the fact remains that, although Benjamin was specifically charged with the commission of these criminal acts and Mary was specifically charged with criminal relations with at least one officer of the colony, nevertheless neither of these defendants took the witness stand to deny the truth of these charges. **This is a civil action, and the failure of a party to testify to**

facts peculiarly within his knowledge, or to call witnesses within the jurisdiction of the court to contradict evidence of conversations had with them or in their presence, is a circumstance that cannot be overlooked."

Attorney General vs. Pelletier, 240 Mass. 264, (1922).

This was an information to oust Pelletier from the office of District Attorney. Charges included those of collusion with one Coakley and others in practices constituting malfeasance in office. The evidence adduced consisted of a long chain of circumstances, and Pelletier neither took the stand nor offered any explanation thereof. Chief Justice Rugg, in delivering the opinion of the court, said, at p. 316:

"The respondent did not testify. He called no witnesses. He offered no evidence. He rested at the conclusion of the evidence introduced by the informant. There was ample evidence introduced by the informant tending to prove that the respondent was guilty of many of the charges set forth in the information. This evidence, if believed, constituted abundant proof of malfeasance and misfeasance in office arising from motives utterly unworthy of an upright man. The case shown by the evidence vitally affected the official conduct and personal character of the respondent. Instant impulse, spontaneous anxiety and deep yearning to repel charges thus impugning his honor would be expected from an innocent man. **Refusal to testify himself or to**

call available witnesses in his own behalf under such circumstances warrants inferences unfavorable to the respondent. It is conduct in the nature of an admission. It is evidence against him. This principle of law has long been established and constantly applied. **The reason is that it is an attribute of human nature to resent such imputations. In the face of such accusations, men commonly do not remain mute but voice their denial with earnestness, if they can do so with honesty. Culpability alone seals their lips. The law simply recognizes the natural probative force of conduct contrary to that of the ordinary man of integrity."**

Cases to the same effect are:

United States vs. *Carter, 217 U. S. 286, 315-7 (1909);*
The New York, 175 U. S. 187, 204-5 (1899);
Kirby vs. Talmadge, 160 U. S. 379, 388, (1896);
One Buick Automobile vs. *United States, 275 Fed. 809, (1921) (C. C. A. 8);*
Hill vs. *United States, 234 Fed. 39, (1916) (C. C. A. 8);*
Gulf Ry. Co. vs. *Ellis, 54 Fed. 481, 483, (1893) (C. C. A. 8);*
Hyams vs. *Calumet & Hecla Min. Co., 221 Fed. 529, 540, (1915) (C. C. A. 6);*
Weed vs. *Lyons Pet. Co., 294 Fed. 725, (1923);* (*Affirmed* 300 Fed. 1005) (C. C. A. 3);
Nelson vs. *City of New York, 131 N. Y. 4, 13 (1892);*
Keller vs. *Gill, 92 Md. 190, 196 (1900).*

4. The finding of bribery as one of the elements of fraud, is sustained by the proofs, and is not based on improper inferences or presumptions.

Appellants' only specifications of error to and complaints of the conclusion of the Court of Appeals that fraud and conspiracy to defraud were proved is directed to the sub-conclusion of the Court of Appeals that the competent and admissible evidence shows Sinclair bribed Fall with $230,500 face value of Liberty Bonds.

We have above demonstrated that this was but one of the elements of fraud involved in the case. Appellants, however, seek to make it appear that it was the sole basis of the adverse finding of the Court of Appeals.

They claim that this sub-conclusion of the Court of Appeals is an inference based upon rebuttable inferences and presumptions. The following facts with respect to the bond transaction are proved by direct and uncontradicted evidence.

1. Continental Trading Company was organized in Canada for a single American transaction on November 17, 1921, the day on which the Mexia oil sale contracts were signed in New York City.

2. No record was kept of the stockholders of the corporation, and bearer coupon share warrants were issued in lieu of stock.

3. It was organized for an undisclosed client and his associates.

4. Its single American transaction was concluded in the presence of and participated in by Sinclair.

5. Continental Trading Company stood to make approximately $8,000,000 on this transaction by a concurrent deal with Sinclair's company and another company.

6. This transaction was negotiated by Blackmer for himself and **associates.**

7. Sinclair for his company and Stewart for his company guaranteed that Continental Trading Company would perform its obligations.

8. The profits of Continental Trading Company aggregating $3,080,000 by May 26, 1923, were invested in First Liberty 3½% Bonds, some $700,000 being so invested in and around the month of May, 1922.

9. Continental Trading Company received on May 8, 1922, $300,000 of face value of said issue of bonds $250,000 of which are identified by serial numbers.

10. On May 29, 1922, Everhart, son-in-law and business associate of Fall, was in possession of $230,500 face value of such Liberty bonds, $200,000 of which are identified by serial numbers and are the same bonds which Continental Trading Company received as above.

11. Everhart used $140,500 of the bonds to pay debts of the cattle company owned by Fall and himself, and personal notes of Fall and himself and the

remaining $90,000 of the bonds were deposited to Fall's account in a bank with a statement by Everhart at the time that they belonged to Fall.

12. Everhart claimed privilege against self-incrimination and refused to state whether he was in the east during May, 1922, or from whom or how he acquired the bonds; and stated he had never been connected officially with the Mammoth Oil Company, or Sinclair.

13. Osler, President of Continental Trading Company, stated he was told by his client who the latter's associates were; but claimed privilege as an attorney and refused to testify who the associates were or whether Sinclair was one of them and refused to testify whether Liberty Bonds were distributed as dividends.

14. Of the four men present on behalf of the purchasers at the time the Humphreys deal was negotiated, O'Neil and Blackmer were in Europe when the case was assigned for trial and at the time of the trial and refused in the Letters Rogatory to state whether they or Sinclair had any interest in the profits of Continental Trading Company. A subpoena was issued for Stewart at his business address but was returned by the marshal, endorsed as not found. Sinclair was present throughout the trial but was not called to testify.

15. On May 26, 1923, with an assured $5,000,000 profit yet to accrue under its Humphreys contract,

Continental Trading Company assigned the contract to Sinclair's company and the other guarantor for $400,000.

16. Shortly after May 26, 1923, Continental Trading Company surrendered its charter.

17. All records of Continental Trading Company were destroyed.

18. There is no evidence that O'Neil, Blackmer or Stewart had any business dealings with the Government or Fall in or about May, 1922, when Everhart showed up in possession of the bonds.

19. Fall was not called as a witness.

20. On April 7, 1922, Sinclair's company received a lease of the whole of Teapot Dome, marked with the badges of fraud enumerated hereinbefore (*supra*, pages 134-36).

21. On May 26, 1923 (the date of the assignment by Continental Trading Company of the Humphreys contract to Sinclair's company and the other guarantor), Sinclair, contemplating an early departure for Russia on business, engaged Fall as counsel to follow and meet him over there. Fall said he wanted $25,000 to purchase land. Sinclair instructed his private secretary, Wahlberg, to let his attorney, Zevely, have upon request $25,000 in Liberty Bonds. Zevely requested the bonds, which were taken from Sinclair's box and forwarded to a bank as a package for Fall's account. Fall realized $25,671.36 for the

bonds. No note was given until after Fall returned from Russia. The note was sometime thereafter given payable to Zevely for $25,000. There is no evidence of any payment of interest or principal. The money was not used to purchase land and was not used until about February 1, 1924. Fall received $10,000 as expense money for the trip.

In approaching its finding of fraud and corruption, the Court of Appeals conceded the law to be, as appellants contend, that fraud and conspiracy to defraud must be established by clear, unequivocal and convincing proof and that it must be the only conclusion which can fairly and reasonably result from the circumstances proved (R. 817). After reviewing the facts and circumstances surrounding the negotiation of the lease and contract and also the bond transactions, the Court of Appeals said as to the charge of bribery (R. 838):

> "The really determinative question, therefore, as to this branch of the case is: Are the reasonable inferences and presumptions legitimately and properly to be drawn from **all the facts and circumstances** disclosed in the evidence sufficient to supply the so-called missing link?"

The Court of Appeals then adverts to certain facts previously discussed, such as that Sinclair received a valuable lease through Fall's efforts and unfair manipulations, that an intimate relationship existed between them, that Sinclair arranged at Fall's suggestion for acreage in the Reserve, that Liberty Bonds were used to cover a loan by Sinclair to Fall in May,

1923, and that many logical witnesses for the defense were not called, and finally concludes (R. 846-7):

> "**While no isolated fact, circumstance, or presumption in the case and no particular inference may be sufficient to establish Sinclair's connection with the receipt of bonds by Fall or Everhart, yet, taking the entire record of what was done, and all the inferences properly to be drawn therefrom,** the fact is sufficiently established that the bonds in the possession of Everhart and used in part for Secretary Fall's benefit were received by Everhart either from Sinclair or the Continental Trading Company, Limited. That company, we have pointed out, is shown to have been the agent of Sinclair, Blackmer, O'Neil and Stewart. Its assets consisted principally of Liberty Bonds. These assets were delivered to the shareholders, as Olser's letter shows. If by direct evidence it appeared that Sinclair was the owner of certain Liberty Bonds, which afterwards appeared in Secretary Fall's hands, in view of all the circumstances of this case, a court could not escape the conclusion that Sinclair had transferred them to Fall. The only difference here is that the bonds were the property of an agency in which Sinclair was interested, and in some manner reached Everhart and Secretary Fall. Is a court to say that because none testified as to the actual transfer of the bonds, a fatal missing link in the evidence exists. We conclude not. **The reasonable, proper, and natural inferences and presumptions from the accrual of condemnatory incidents appearing in this record supply the so-called missing links in**

the testimony and satisfy us of Sinclair's connection with the Continental Trading Company, Limited, and with the acquisition of the government Liberty Bonds by Everhart and Secretary Fall. A trail of deceit, falsehood, subterfuge, bad faith, and corruption, at times indistinct, but nevertheless discernible, runs through the transaction incident to and surrounding the making of this lease. It should not receive the approval of the courts. **Our conclusion is that the Government has sustained its claim that the lease and contract were procured by fraud and corruption, and that they should be cancelled.''**

Appellants' contention that an inference or conclusion cannot be based upon a rebuttable inference or presumption must be limited in its application to rebuttable inferences and presumptions of law. This proposition must be limited to such inferences as that men are to be considered honest and faithful to their duties until some evidence is offered that the men concerned were not honest and faithful to their duties, that a man exercised ordinary care for his own safety and was not guilty of negligence until some evidence is introduced to the contrary, etc. The cases cited by the appellants are of this type.

Such is the case of *United States* vs. *Ross, 92 U. S. 281 (1875).* Ross claimed a fund in the United States Treasury as the proceeds of the sale of property belonging to him which had been seized by military authorities during war time. He was unable to prove his property was turned over to a Treasury agent and sold by him and the proceeds covered

into the Treasury. There was no proof that the fund was the proceeds of the sale of his property except by inference on inference that Government officers, who had seized the property, performed their legal duties and turned it over to Treasury agents, who sold it and covered the proceeds into the fund. In the opinion it is said at page 283:

> "Such were the facts found; and from them the Court deduced, **not as a conclusion of fact,** but as a presumption of law, * * *."

and on page 284:

> "Whenever circumstantial evidence is relied upon to prove a fact, the circumstances must be proved, and not themselves presumed."

Manning vs. *Insurance Company, 100 U. S. 693 (1879)*, cited by appellants was an action to recover agency commissions on renewal insurance premiums collected. The plaintiff proved what policies he had written which, if renewed, would have been in force at the time his agency was terminated but did not prove that the policies had been renewed or extended or that the renewal premiums were actually collected. He claimed that he should recover upon the inference that renewal premiums were collected and were still being collected from policies which he had written. In the opinion it is said (pp. 697-8):

> **"We do not question that a jury may be allowed to presume the existence of a fact in some cases from the existence of other facts which have been proved.** But the presumed fact must have an

> immediate connection with or relation to the established fact from which it is inferred. If it has not, it is regarded as too remote."

In *Looney* vs. *Metropolitan Railway Company, 200 U. S. 480 (1905)*, which was an action for damages for personal injuries, the plaintiff proved as a fact that the injury occurred but offered no evidence to establish the negligence of the defendant. The Trial Court directed a verdict for the defendant, and on appeal, this Court refused to infer negligence on the defendant's part from the mere fact that the injury occurred, saying (p. 486):

> "* * * But, on the other hand, plaintiff must establish grounds of liability against the defendant. To hold a master responsible, a servant must show that the appliances and instrumentalities furnished were defective. A defect cannot be inferred from the mere fact of an injury. There must be some substantive proof of the negligence. Knowledge of the defect or some omission of duty in regard to it must be shown."

The inference upon which the plaintiff relied was based upon a presumption of law and not upon a proved fact; and the case is not an authority against appellee.

But proved facts and circumstances, although disconnected, may support an inference or conclusion involving intermediate inferences and conclusions of fact. Unless this were so a very large portion of cases which must be proven, if at all, by circum-

stantial evidence would fail. And almost invariably, fraud and conspiracy cases must be proven by circumstantial evidence. The oft repeated statements of courts that a wide latitude must be allowed in the introduction of evidence and circumstances in fraud and conspiracy cases would otherwise be practically valueless.

The Court of Appeals considered the badges of fraud and the proved facts respecting the bond transaction, as above enumerated; and held that the proved facts pertaining to the bond transaction lead fairly, reasonably, clearly, unequivocally and convincingly only to the conclusion that Sinclair bribed Fall with the $230,500 worth of Liberty Bonds. That inference and conclusion is not based upon any rebuttable inference or presumption of law. In so far as it is based upon sub-inferences and conclusions of fact it is sustainable under the authorities.

Cooper vs. United States, 9 Fed. (2d) 216, (1925) (C. C. A. 8).

Cooper and another were convicted of conspiring to defraud the United States of its revenues by filing false income and excess profits tax returns of a corporation of which they were officers. On appeal from conviction, a new trial was granted because of errors of the court in refusing charges requested and in incorrectly instructing the jury. Circumstantial evidence was relied upon and the charge of the trial court upon the establishment of a conspiracy by circumstantial evidence was approved in the following language (page 224):

"Upon the subject of conspiracy, as indeed in most other particulars, the charge of the court was exceptionally clear and comprehensive. Conspiracy was excellently defined. It is practically always established by circumstantial evidence, **and this method in no sense amounts to the building of one presumption upon another.** The attack upon this ground is a novel one, which, if indulged, would grant immunity to conspirators in nearly all cases. The jury was told that the evidence on the whole must not only be consistent with defendants' guilt, but must fully and fairly exclude every reasonable hypothesis of their innocence."

Dimmick vs. United States, 135 Fed. 257, (1905) (C. C. A. 9).

Dimmick was convicted of the larceny of money from the United States mint in San Francisco. On appeal, the conviction was attacked on the ground that the circumstances were so disconnected as to have no probative value tending to show Dimmick was the person who committed the theft. The Court of Appeals in affirming the conviction says (p. 264):

"There was ample testimony given at the trial tending to show that the money of the government was stolen from the mint, and that Dimmick was the person who committed the theft. A conviction based on reasonable inferences which the jurors had the right to draw from the evidence cannot be set aside as unsupported by evidence. **In establishing the facts in this case the prosecu-**

tion did not 'rely solely upon inferences, presumptions resting upon the basis of another presumption,' as repeatedly claimed by the plaintiff in error, but independently proved by a chain of facts the essential elements necessary to be proven. It is true, as stated in Wills on Circumstantial Evidence, 283, that every circumstance not clearly shown to be connected as its correlative with the hypothesis it is supposed to support must be rejected from the judicial balance. But as recognized by the author, when it is distinctly established that there exists between the *factum probandum* and the facts which are adduced in proof of it, a real connection 'either evident and necessary, or so highly probable as to admit of no other reasonable explanation,' the proof becomes sufficient."

Among the circumstances held to have been correctly admitted was evidence that the defendant was continuously in debt during the time of his employment at the mint until after the theft was discovered. On this point it was said in the opinion (p. 266):

> "It is proper to state, in relation to these questions, that the existence or nonexistence of motive is immaterial where the guilt of the accused is clearly established, but although not an essential element it may throw some light on the intent with which the act was committed, and, as a matter of evidence, is frequently an important element in the case of the prosecution. Pointer *vs.* United States, 151 U. S. 396, 414, 14 Supreme Court 410, 38 L. Ed. 208."

State vs. Fiore, 85 N. J. L. 311, (1913).

The defendant was tried and convicted as an accessory to a murder. The claim made by the State was that the victim's wife, who in a separate trial had been convicted of murder in the first degree, had administered poison to her husband which caused his death; and that although the poison was administered when the defendant was not actively nor constructively present, yet the crime was induced by his counsel and advice, whereby he became an accessory to the murder.

The record of the conviction of the wife was offered and admitted. Such record was held *prima facie* evidence that the murder was in fact committed by the defendant's principal. Testimony was admitted tending to show illicit relations existing between the defendant and his principal.

Testimony as to what was said in a conversation between the wife and her daughter under the following circumstances was admitted. The defendant being in prison requested the wife to come and see him but she sent her daughter. The daughter testified that the defendant instructed her to tell her mother to poison her husband and that if she did not he would kill her when he got out of jail and that she told this to her mother. This was held competent and admissible evidence.

Testimony of a chemist concerning the contents of a box containing rat poison found in an alley near the deceased's home was admitted as some evidence of the contents of a box of rat poison which

the wife had purchased and possessed at the time of the poisoning. On page 320 of the opinion it is said:

> "**The next point relates to the refusal of the Court to charge as requested, that in 'considering the evidence in the case the jury may draw inferences from facts which have been proved, but must not draw inferences from other inferences.'** The subject is dealt with at considerable length in 1 Wig. Ev., Sec. 42, and need not be here repeated. In *Perkies vs. Hauxstert Land Co., 51 Vroom 369, 377*, this Court held that a course of practice by one acting as agent would justify an inference that the employer knew of it, **and from this inference of knowledge, coupled with continuance of agent's acts, a second inference could be drawn, namely that the employer had not forbidden it and had actually consented to it.** It is proper to say that in this case counsel does not point out in his proof any foundation for this request and so far as we are able to discover none exists, but even if it does, there was no error in refusing the request as made."

Hinshaw vs. State, 147 Ind. 334, (1897).

Hinshaw was convicted of murder in the second degree on circumstantial evidence. In the opinion affirming the judgment it is pointed out that although the circumstances are disconnected the conclusion does not amount to building inference on inference. Each circumstance was said to add weight to each of the other circumstances and from all the circumstances including an obviously fabricated story by the defend-

ant and his failure to call one witness who could have disproved the motive to which the circumstances pointed, the guilt of the defendant was an unavoidable conclusion. It is said in the opinion (pp. 362-3):

> "These circumstances taken in connection with all the others increase the strength of the others immensely, and they in turn increase the strength of these. All these circumstances, and all others brought to light by the evidence surrounding the homicide, in the language of the author from which we have quoted, 'so tally and confirm each other, as to leave no doubt of the fact they tend to establish,' namely, that no person was present when the homicide was committed, except appellant and his wife. **This process of tallying and confirming each circumstance by the others does not infringe the general rule that one inference cannot be based on another. There is an important exception to that rule, however. A fact in the nature of an inference may in itself be taken as a basis of a new inference, whether intermediate or final, provided the first inference has the required basis of a proved fact.** Burrill Cir. Ev., p. 138; Best on Pres., Section 187; 1 Greenl'f. Ev., Sec. 34. In short, it is not merely the sum of the simple probabilities created by the numerous individual circumstances pointing to and indicating the absence of burglars and all other human beings than appellant and his wife at the scene of the murder but is the compound ratio of them all tallying with and confirming each other that made them all strong enough when considered together as to fully justify the jury in believing and finding that no

> burglars and no other human beings than appellant and his wife were present when she was shot; from which they had a right to conclude to a moral certainty that appellant committed the murder."

One of the circumstances relied upon was the proved fact that blood was found on a window sill. An expert testified that it was blood from an animal of the mammalian family and that it was consistent with human blood. This evidence was introduced to tally with the State's theory that the defendant, after killing his wife and inflicting wounds on himself, went to the window on which the blood stain was found to throw out his pantaloons, razor, pocket-book and revolver to the places where they were respectively found and in so doing blood dropped from his wounds onto the sill. The objection to the competency of the evidence was that it permitted the jury to first infer from the fact that it was mammalian blood that it was human blood and from that inference that it was the appellant's blood and from that inference that it fell from his wounds that night. The court stated in answer thereto (p. 369):

> "Counsel cite many authorities to the general rule that an inference cannot be based on a mere inference. But counsel are entirely wrong in assuming that by the admission of that evidence the Court either impliedly or otherwise so instructed the jury. The blood stain was a mere circumstance in and of itself of little or no importance; especially was it of no importance unless there was evidence, circumstantial or

otherwise, authorizing the inference that it was dropped there that night. Evidence that it was there before, or was placed there after that night, would render it of no value whatever. But the blood stain was there and it was consistent with and might have been human blood. The first step was to prove that fact. However small its force alone it might become important by the addition of the proof of other circumstances.

* * * * * * *

"If there was no circumstance in evidence that connected the blood stain with the fatal tragedy that night, then we are bound to presume that the jury had intelligence enough, under proper instructions from the Court, to assign no weight or significance to it and hence there was no error in its admission."

Wigmore on Evidence, 2nd Edition, Vol. 1, Sec. 41:

"Circumstantial Evidence May be Proved by the Same Kind. It was once suggested that an 'inference upon an inference' will not be permitted, *i. e.*, that a fact desired to be used circumstantially must itself be established by testimonial evidence; and this suggestion has been repeated by a few Courts, and sometimes actually enforced. There is no such rule; nor can be. If there were, hardly a single trial could be adequately prosecuted. For example, on a charge of murder, the defendant's gun is found discharged; from this we infer that he discharged it; and from this we infer that it was his bullet which struck and killed the deceased. Or, the defendant is shown to have been sharpening a

knife; from this we argue that he had a design to use it upon the deceased; and from this we argue that the fatal stab was the result of this design. In these and innumerable daily instances we build up inference upon inference, and yet no Court ever thought of forbidding it. All departments of reasoning, all scientific work, every day's life and every day's trials, proceed upon such data. The judicial utterances that sanction the fallacious and impracticable limitation, originally put forward without authority, must be taken as valid only for the particular evidentiary facts therein ruled upon."

E. THE ILLEGALITY OF THE LEASE AND CONTRACT.

1. Analysis of the lease of April 7, 1922, and the supplemental contract of February 9, 1923.

(a) *The lease of April 7, 1922.*

The preambles of the lease (which were written by Secretary Fall, R., 339, 591) recite **four objects** to be attained by the lease, as follows: (1) The duty resting upon the Government and the Government's desire to secure and store a supply of fuel oil and **suitable storage** for such fuel oil at points easily accessible to the Navy; (2) The Government's desire to avoid "in so far as possible **any risks** of loss of the supply of crude oil available for the United States Navy **by a reduction of gas pressure** resulting from the drilling and operating of wells located outside of Naval Reserve No. 3;" (3) The Government's desire to create a competitive market and secure the best

price for Government royalty oil from the Salt Creek Field; (4) The Government's desire to exchange its royalty oil from the Reserve for fuel oil and to secure **adequate storage facilities for the storing of such fuel oil as is received in exchange, over and above the requirements for use for the United States Navy** (R. 14).

It will be observed that all of these purposes and objects are recited as prime objects moving the Government to make this lease. They are all stated as of equal importance to the Government and as the moving causes, taken together and in conjunction, for the making of the lease.

Article I states the consideration to be given and received as single and entire on each side. The language is: "The lessor, in consideration of **royalties to be paid and the covenants to be observed, as hereinafter specifically set forth,** does hereby grant and lease to the lessee," etc. The article then states the demised premises in detail (R. 15-16).

Article II provides for the furnishing of a bond in $250,000 for the lessee "to proceed with reasonable diligence to begin operations for the drilling" of not less than twenty wells within 180 days from the date of the lease. It specifies the exact locations where these are to be drilled (R. 17-18). In its further clauses it provides for certain tests, and that if these tests show a total production of 20,000 barrels per day, then the lessee **"or its nominee"** shall within sixty days commence operations for constructing a pipe line of not less than 25,000 barrels

capacity, extending from the leased premises to the main pipe line operated by Sinclair Pipe Line Company or that operated by Prairie Pipe Line Company. The Article then provides for additional wells to be drilled if the first twenty do not produce 20,000 barrels, and further provides that when by the drilling of such additional wells the production shall reach 20,000 barrels the pipe line is to be constructed. It is to be noticed that the pipe line may be built by the "nominee" of Mammoth. It is reasonable to assume that the parties always had in mind the building of this pipe line, as it was ultimately built—by the Sinclair Pipe Line Company.

Article II further provides for royalties on a certain schedule or per cent. ranging from 12½ to 50% in the case of oil over 34° Baume; from 12½ to 25% on oil of less than 34° Baume. The royalty is to be computed, however, on the average production per well per day for the calendar month. This means that the higher royalty is not to be paid in the case of individual wells producing a certain number of barrels per day, but that all the production of all the wells is to be lumped together for the calendar month and that total production is to be divided by a divisor made up by multiplying the total number of wells by the total number of days in the month. Thus, for example, if there are ten wells producing respectively 1,000, 800, 600, 400, 300, 200, 100, 100, 50 and 50 barrels, or a total of 3600 barrels per day, these wells in thirty days would produce 108,000 barrels of oil. As there are ten wells and thirty days in the month,

this total should be divided by 300. This will give the average per well per day for the calendar month as 360 barrels. The royalty will be calculated then on the first fifty barrels for each well at 12½%, on the next fifty barrels at 16⅔%, and on the next 100 at 20%, and on the next 100 at 25%, and on the remaining 60 at 30%. It will thus be seen that the actual royalty will be between 12½ and 30%, or actually about 21½%. The royalty oil actually never reached in fact any higher figures in the schedule.

A very important provision of the same Article II appears at R. 24, under the sub-heading (e). It is:

> "The lessor agrees to, and does hereby, **sell to the lessee, and the lessee agrees to, and does hereby, purchase from the lessor all the royalty oil hereinbefore mentioned, as and when the same is produced by the lessee, so that the lessee shall take and have title to and possession of, and the right to dispose of all oil, as and when the same is produced. In payment for said royalty oil, and in lieu of the delivery in kind to the lessor, lessee agrees to set up an oil exchange credit to lessor therefor and to issue to the lessor, as evidence thereof, oil certificates showing the amount of said royalty oil taken by the lessee and the value thereof.**"

A further significant clause is: "The oil certificates above referred to shall be non-interest bearing and shall be in form substantially as follows," etc.

The provisions above referred to show as clearly as any language can that the transaction was intended to be and was in fact and in law a sale, and

that what arises on the delivery of the royalty oil is a **debt** from the lessee to the lessor. If no debt is created why was it necessary to provide that the certificates should not bear interest? The parties knew that if they did not so provide the law would imply an obligation to pay interest, as it does in every case of indebtedness from one person to another.

At R. 25 the form of oil certificates is given. Its language again is significant. It evidences in the first place the delivery by the Government to the lessee of oil of so many barrels, **"being of a cash value of $——."** It then provides for redemption in one of several ways, the first of which is:

> **"(a) As a credit upon, or for the extinguishment of any obligation to the maker hereof from the United States Government by reason of the construction of steel tank storage for the use of the United States Navy in the storing of fuel oil."**

Here again, in speaking of the construction of steel tank storage, the parties recognize that an **"obligation"** will be incurred by the United States for the erection of such storage. Can language be plainer as indicating that the construction of such storage **will create a debt** from the United States to the lessee who will construct such storage? What can the "obligation" of the United States mean except "indebtedness," and what can it mean to say that the amount of the certificate can be used as a "credit" against that obligation except to mean payment of indebtedness?

The certificate then in paragraph (*b*) (R. 25) provides that Mammoth will deliver fuel oil of Navy specifications upon "the exchange basis fixed" in the contract.

It further provides in paragraph (*c*) (R. 25) that Mammoth will sell gasoline, kerosene, lubricating oils and/or other petroleum products to the Navy, "the basis of exchange therefor and the conditions of delivery to be as mutually agreed upon in a separate contract" between the parties.

This clause is obviously illusory. No such contract was ever made, or if the supplemental contract of February 9, 1923, be taken to cover the matter we only have a delivery at market. It is to be borne in mind further, as will be hereafter more particularly pointed out, that this clause is wholly void and illegal for the reason that the United States has no power thus to buy by private contract, and without competition, supplies for the Navy.

Lastly, in paragraph (*d*) the certificate provides for its redemption by payment of cash to the United States (R. 25). This is only to be done under the conditions mentioned in the contract. We shall refer further to this matter, but it should be mentioned here that the redemption in cash both by the original contract and by the supplemental agreement **is made impossible unless and until certain storage construction is completed.** Besides, Admiral Robison testified without contradiction that it was always the intention of the parties, when the lease and contract were being discussed and made, that all of the oil certificates

should be used for fuel oil and other petroleum products and for tankage (R. 637). He further testified without contradiction that in order to avoid covering cash into the Treasury, he discussed with Sinclair, Fall and others the necessity of evolving and adopting a plan, whereby the royalty oil would be converted into fuel oil and storage without the use of cash (R. 637). So this clause is entirely illusory.

The agreement then goes on to state how these oil certificates "shall be redeemed" (R. 26-7). We need only again call attention to the fact that redemption of these certificates is another evidence that the parties meant to create and did create an indebtedness by lessee to lessor.

Beginning with the second paragraph on R. 26 occurs a clause on which appellants set great store. It provides that if and when requested so to do by lessor, lessee will construct or pay for the construction of steel storage tankage up to but not in excess of such amount as shall be estimated to be necessary or required for the storage by lessor of the fuel oil to be received by it as hereinbefore provided in exchange for royalty crude oil from the lands hereby leased.

It is contended by the appellants that this is a sort of option; that until exercised it is wholly innocuous; that it is severable from the balance of the lease. But we may as well point out here that it is a solemn covenant by the lessee and that it is an integral part of the consideration for the lease; that under all the

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evidence furnished not only by the lease itself, but by the testimony given by Admiral Robison, it was one of the main and salient features of the lease, and as Robison clearly pointed out, the lease would not have been made without it. It is not therefore severable from the balance of the lease, but if it is illegal the whole lease on which it is based and founded must fall.

At the bottom of R. 26 and on R. 27 the lease specifies the conditions upon which **"a portion of said certificates may be redeemed in cash."** A reading of that paragraph and of the language just quoted will show that there is a certain portion of the certificates which never can be redeemed in cash, but on the other hand must necessarily be used for storage. This again shows that the main purpose and object of the lease was to obtain the construction of storage and knits that object inextricably into the lease.

At the bottom of R. 27 and top of R. 28 are found the provisions for the delivery of fuel oil against certificates for crude oil and the ratio of fuel oil to be given for barrels of crude oil represented on the face of the certificates.

It is not necessary to analyze the balance of the lease, except to say that it vests solely in the Secretary of the Interior certain powers in Article II, paragraphs 5, 6, 7, 8 and 9 (R. 30), and that it vests in the Secretary of the Interior the sole right to approve a termination of the lease (Art. V, R. 34), and the sole right to consent to an assignment of the lease (Art. X, R. 35 36). These provisions were

inserted with the knowledge of Secretary Denby, who was desirous of them (R. 636).

(b) *The supplemental contract of February 9, 1923.*

This contract is designated "supplemental" to the lease (R. 36). It recites (R. 37) that the Government has requested Mammoth to construct storage tankage facilities as specified in Article I. It is therefore quite clear that the positive and absolute covenant of Mammoth to construct such storage facilities, appearing at R. 26, and contained in the original lease agreement, has now become effective by reason of the Government's demand.

In Article I, Mammoth agrees to construct four projects for the Government, beginning Project A immediately upon being furnished plans and specifications (R. 36-39), and beginning the other projects from time to time after the Government shall have accumulated a certain amount of oil certificates such as will justify Mammoth in starting the expense of the various projects (R. 39-42).

At R. 43-44 is a covenant that Mammoth will, upon the demand of the Navy Department, go on building storage after all the projects mentioned in the agreement are completed. The contract is therefore practically endless in its operation so long as royalty oil is received by Mammoth.

Article II, R. 44, provides for the filling of the tankage with fuel oil at the agreed rate. It further provides (R. 45, top) for the redemption of oil cer-

tificates by the purchase of various petroleum products at market price. Such contract is obviously illegal, as the Navy has no power to purchase such supplies except by competitive bidding. Art. II further provides that Mammoth may anticipate the filling of the tanks before oil certificates have accumulated necessary to liquidate the cost of the fuel oil.

Art. III, R. 48, defines the cost of the work to be done by Mammoth. No real conception of the scope of these provisions can be had except by reading them *in toto*. They are the most extraordinary provisions imaginable. They cover every kind of expense that Mammoth or its nominee may incur, even including legal expenses for attorneys and assistants, stenographic fees and expenses, share of officers' salaries, accounting and purchasing department salaries, etc., etc. In other words, if Mammoth (or, as in this case, its nominee, Sinclair Refining Company) does this work, a part of the salaries of officers whose time would otherwise be devoted to the refining business is to be paid by the Government. The possibility of abuse under such a contract hardly needs to be mentioned.

Article IV, R. 49-50, recognizes that the oil certificates really represent indebtedness and that it is a little too much to expect the United States to stand out of its money for perhaps months or years without interest, and it alters the original contract by making the oil certificates bear interest at the rate of five per cent. per annum, but it also calls for five per cent. interest to be charged against the Govern-

ment "on all unsettled balances due Mammoth" by the Government. These balances would consist in deferred payments for construction. See Art. III, R. 47-48.

Articles V, VI, VII, R. 50, provide for delays of work, designation by Mammoth of a nominee, and the application of bonds previously given to performance of this contract.

Article VIII, R. 51, states that the Government has elected to redeem such an amount of oil certificates in accordance with the terms of the supplemental contract, as shall be necessary for the full performance thereof. Until the supplemental contract has been fully performed the Government surrenders its right to have oil certificates redeemed in any other way.

2. Appellants' unwarranted construction of the lease.

The appellants insist upon severability with a vengeance. They not only attempt to sever the supplemental agreement of February 9, 1923, from the lease of April 7, 1922, but they repeatedly throughout their brief attempt to subdivide the said lease into two contracts, which they designate as the primary and basic contract or lease, and the collateral agreement disposing of the royalty oils. These they say are two independent contracts contained in one written agreement.

We shall hereafter under another heading deal with the legal question of severability. It is our purpose

here and now merely to point out that upon a construction of the agreement itself, and upon the admitted facts, this contention is unsound.

As above pointed out, the lease of April 7, 1922, is bilateral, covenants being made on both sides, and all of the Government's covenants are set over against all of the lessee's covenants as considerations moving each party to make its own covenants. On the part of the Government two main undertakings are made, (1) to lease at a certain royalty, and (2) to bargain and sell to the lessee the Government's royalty oil. On the lessee's part two main undertakings are made, (1) to operate under the lease and pay the royalty, and (2) to set up what the lease terms an "oil exchange credit" in favor of the Government, to be evidenced by certificates showing the royalty oil purchased and its value.

We presume appellants would hardly dare argue that the Government would have entered into the lease without the provision for the sale of royalty oils. It is quite likely that the lessee would not have entered into the lease on the terms of this lease without the right to buy the royalty oils. Certainly nobody can speculate with any certainty as to what either party would have done had either of these undertakings not been made by the other party.

But appellants assert that in connection with the oil exchange credit the lessee extended to the Government four independent options as to how the Government would require the lessee's indebtedness to it for royalty oils sold the lessee to be liquidated. It

is significant that every time this matter of the so called "options" is mentioned appellants state them in an order not set forth in the lease. They always state the first so called "option" of the Government as a right to receive cash.

A mere glance at the lease will show that by its very terms the Government cannot under any circumstances receive all of its consideration in cash. The very lease itself, in referring to cash, which it states as the last option, says (R. 26): "The conditions upon which **a portion of said certificates** may be redeemed **in cash** are as follows:". A mere reading of the balance of the paragraph will show that some of the oil exchange credit must be used for what the lease specifies as "steel tank storage."

The whole scheme of the lease clearly indicates that the first thing to be derived by the Government is steel tank storage to be built and filled with fuel oil by the lessee; that as to any of the oil exchange credit not so absorbed, it may be absorbed in gasoline or other petroleum products, and that only if there is some of the exchange credit left over and not used for any of the above, is it to be liquidated in cash.

A glance through the lease will demonstrate that the things for which the oil exchange credit is to pay are always mentioned in the following order: first, the steel tank storage; second, fuel oil; third, gasoline, kerosene, lubricating oils, etc.; and fourth and finally, cash, if there remain any of the credit not absorbed in the previous items.

The oil certificate itself (R. 25) states:

> "Upon the conditions stated in the contract * * * this certificate may be redeemed in cash."

No such certificates may be redeemed in cash until the Government's requirements for steel storage tankage and fuel oil shall have been satisfied.

This lease is to be judged as to its legality, we submit, by what the Government desired to accomplish by it, and the lease not only by its preambles, but by its covenants, and by all the testimony with regard to the purpose for its making, is definitely classified as an instrument which was intended to carry out the plan of building fuel depots on the Atlantic Coast and to accomplish the storage of fuel oil by the use of royalty crude oil produced under the lease.

Let us assume, however, although we do not for a moment concede it, that the fuel oil certificates could be redeemed, though the lease says they cannot, wholly in cash. Where do appellants find the authority in the Act of June 4, 1920, or any other act of Congress, for a department officer authorized to sell property of the Government to make that sale upon an interminable and non-interest bearing credit to the purchaser?

Concededly no redemption of any certificate can be made in cash unless, as the lease provides, the Government shall on or before July 1, 1923, or any July 1 thereafter, notify lessee what portion of the certificates it desires shall be redeemed in cash for the oil run in the succeeding calendar year (R. 26-27).

This means the Government will have no right to receive any cash for any oil run during the year 1923. It means that if it wishes cash for any part of the oil run during the year 1924, or any subsequent year, it must give six months' advance notice as to how it wishes the oil run in such succeeding year divided as between steel tank storage, fuel oil, gasoline, kerosene, etc., and cash. Meantime the Government's royalty oil is in the hands of the lessee on an open credit. We ask appellants to point to anything in any law of the United States which justifies any such performance as this.

The real truth is that the provision for cash was merely made as a catch-all at the end of the series, to be operative if and only if the Government should prove to be unable to use up all of the royalty oil as consideration for the building and filling of fuel depots on the Atlantic Coast.

3. The real purpose of the lease.

Appellants have had to adopt for the first time in this Court an entirely novel position with regard to the lease. In the opinion of Mr. Justice Butler in *Pan American Pet. & Trans. Co. et al.* vs. *United States*, it is said:

> "The grant of authority to the Secretary of the Navy did not indicate a change of policy as to conservation of the reserves. The Act of June 25, 1910, the Act of February 25, 1920, the Executive orders, and the Joint Resolution of February 8, 1924, show that it has been and is the policy of the United States to maintain a

> great naval petroleum reserve in the ground. While the possibility of loss by drainage might be a reason for legislation enabling the Secretary to take any appropriate action that at any time might become necessary to save the petroleum, it is certain that the contracts and leases have no such purpose. The work to be paid for in crude products contemplated the construction of fuel depots. * * * The record shows that the Navy Department estimated the cost of proposed storage plants and contents at approximately $103,000,000. Congress has not authorized any such program."

Prior to the above declaration counsel for the appellants in both the Pan American case and this case insisted that the Act of June 4, 1920, gave absolutely free and unrestricted power to the Secretary of the Navy to take all of the oil out of the Reserves if he in his unrestricted discretion thought that it was for the benefit of the United States so to do. Nay more, in the courts below counsel for the appellants argued vigorously that the act of June 4, 1920, constituted a mandate to the Secretary of the Navy, to take out all the oil and to take it out as fast as reasonably possible. They even went so far as to allege that the Secretary of the Navy had been negligent in not sooner making leases under that act which would exhaust the reserves.

And they insisted that such an intent on the part of Congress was shown not only by the appropriation of $500,000 for the purpose of storing fuel oil re-

ceived in exchange, but by an "oil appropriation" deduced from the use of the word "exchange," which appropriation of oil for storage purposes was limited only by the quantity of oil in the reserves. This contention this Court answered in no uncertain terms in its decision in the Pan American case.

Now counsel must shift their entire ground of argument. This they do. They suggest that the evidence in this case is convincing that there was serious drainage. They are careful not to say that the threatened drainage threatened all of the underground reserve. In fact they do not suggest how much was threatened. They content themselves by quoting certain opinions that some of the oil in the reserve would ultimately be drained by neighboring drilling.

We have above pointed out (this brief, *supra*, pp. 61-71) that at the time this lease was made there was neither immediate danger of drainage, nor expectation of drainage in the near future; that any leasing could have waited indefinitely; and that no person could say that serious drainage would ultimately occur. We have shown that in spite of this official information to Fall and Robison this lease was rushed through in indecent haste and in secret fashion by private negotiation.

In addition, we have above shown, and we have quoted the only testimony there is in this record on the subject (this brief, *supra* pp. 14-20), that

Robison and Bain both unequivocally state and believe that this lease was made solely for the purpose of providing fuel depots on the Atlantic Coast, for which Congress had not seen fit to appropriate, and for the obtaining for the benefit of the United States, as they deemed it, the construction of a pipe line to serve this donne and other territory of the United States not set apart for the use of the Navy (the Salt Creek field). We do not intend here to re-quote that testimony, but we earnestly urge the Court to turn back in this brief to pages 14 to 20, where at the very outset of our statement we have set forth verbatim the testimony and the only testimony on the subject of the real underlying purpose for the making of this lease.

The language of this Court in the Pan American case fits the facts and circumstances of this case as if it had been written for this case as well as for the Pan American. It is:

> "It was the purpose of those making the contracts and leases to circumvent the laws and defeat the policy of the United States established for the conservation of the Naval Petroleum Reserves. The purpose of the representatives of the Department was to get for the Navy fuel depots or storage facilities that had not been authorized by Congress. The leases were made to obtain the crude products for use as a substitute for money to make good the amounts advanced by petitioners to pay for such improvements."

4. The attempt to distinguish the Pan American case.

An ineffective attempt is made to distinguish the decision of this Court in the Pan American case. In the decision of that case this Court points out that the initial transaction was a contract whereby royalty oil then running to the Navy from Reserves Nos. 1 and 2 in California should be used to provide storage on the Pacific Coast. The Court will remember that on account of the ambitious building program of the Navy the royalty oil was insufficient for the purpose, and therefore the great lease there involved was made to get more royalty oil.

Counsel for appellants seize upon the fact and call attention to the fact that in the present case a lease was made in the first instance and the contract for storage was made after the lease became effective and the Government was receiving oil exchange credits under its terms.

There is not the slightest difference either in the purpose or the principle of the transactions. Admiral Robison frankly states that he considered the Pan American transactions had taken care of the need for reserve fuel depots on the Pacific Coast (R. 611; 637); that he then turned his attention to the Atlantic Coast and considered that the Navy's needs for fuel depots on that coast could be supplied from Teapot Dome (R. 611; 637).

But it must be observed that no royalty oil was running to the Navy at that moment from Teapot Dome. No leases had been made in Teapot Dome

under the General Leasing Act of February 25, 1920, as had been done in the California reserves. The Navy could never get any royalty oil to use as an exchange medium for tankage—fuel depots—unless and until it had made a lease which would create such royalty in favor of the Government.

Robison frankly states that this lease was made to take care of a national emergency (R. 584-86). By this he unquestionably means the provision of depots not authorized or appropriated for by Congress. He adds that the Government incidentally got another valuable consideration, the building of a pipe line through which Salt Creek and Teapot Dome oils could be run off (R. 584-89). But, be it observed, that merely advantaged the Government in the price paid by lessees. In other words, it made the Salt Creek oil perhaps somewhat more valuable. He also argues that the pipe line made crude oil more available for Navy use in case of a national emergency, i. e., made it more readily transportable to the seaboard for naval purposes and relieved railroads from transporting oil, and thus freed them for other emergency purposes in time of war.

Where, pray, is there to be found in the Act of June 4, 1920, any authority to bargain away by lease the Naval Petroleum Reserves of the United States for strategical purposes represented by a pipe line? How do appellants distinguish this sort of performance from that which this Court denounced in the Pan American case, saying:

"It is not contended that the clause confers unlimited authority, and the petitioners say that the word 'exchange' must have some reasonable limitation. But they insist that it is broad enough to authorize the contracts. If it is, there is no reason why crude oil may not be used to pay for any kind of construction work or to purchase any property that may be desired by the Department for the use of the Navy."

In view of the foregoing language do appellants contend that the Secretary of the Navy would have a right to exchange crude oil for the building of a pipe line just because a pipe line is for the benefit of the United States? If so, why do they stop at that point? Why is not our original argument made to this Court in point, that if they are to go this far, then the Secretary of the Navy may equally exchange crude oil for battleships or airplanes, which unquestionably may be of benefit to the United States.

Every element denounced by this Court in the Pan American decision is present in this case. The Atlantic Coast fuel depots were admittedly parts of the $100,000,000 fuel depot building scheme of the Navy (R. 429-30; 637). Robison admits that the $500,000 appropriated for building storage was wholly insufficient (R. 611). He admits that that $500,000 was used to build storage on the Atlantic Coast (R. 611). He admits that in addition he needed vast quantities of royalty oil from Teapot Dome to complete the building program on the Atlantic Coast. Indeed the supplemental contract itself shows a

scheme of building on that coast that would run into millions upon millions of dollars for fuel depots never authorized by Congress.

This Court in the Pan American case pointed out definitely that the Secretary of the Navy was not authorized to use without appropriation by Congress cash received for royalty oil. Such cash must under the provisions of the revised statutes be covered into the United States Treasury (R. S. 3617, 3618). What folly it is to suggest that the intent of the Government in the making of this contract was to receive cash which would have been unusable for the very purpose for which Teapot Dome was opened up.

5. The attempt to have this Court reverse its holding in the Pan American case.

The most remarkable argument made by appellants upon the legality of the lease and contract is a repetition of the argument already discarded by this Court, that the appropriation of $7500,000 contained in the Act of June 4, 1920, is no limitation upon the fuel depot building scheme, but that when that appropriation is exhausted the Secretary of the Navy may use royalty oil, or as they put it here, the "oil exchange credit," in lieu of an appropriation to build storage (Mammoth Brief, pp. 176-79). It ought, it seems to us, to be an answer to this argument to quote what this Court has so recently said in the Pan American case:

> "The Secretary's authority to provide facilities in which to 'store' naval reserve petroleum or its products did not extend beyond those that might be provided by use of the money made available by the Act of June 4, 1920."

Are counsel for appellants asking this Court to overrule what it has so recently and so clearly said? They put the same dilemma to the Court with regard to this matter as was put by counsel for the Pan American Company in their argument. They say, here was the lease made. Here was the royalty oil coming in to the Navy. If the Secretary had no place in which to store it what was the poor man to do? Must he not through necessity, through the medium of a so called exchange of royalty oil for tanks, get the fuel oil storage? Have they forgotten that Congress was in session? Have they forgotten that having had one appropriation it was their privilege to ask for another? Or do they realize as Robison realized, as Fall realized, that to ask for any such appropriation would raise the ghost of this whole outrageous dealing and bring Congress down in its wrath upon the perpetrators of this outrage on orderly government.

6. The alleged severability of the lease and contract.

In an effort to save to Mammoth Oil Company expenditures of approximately $1,000,000, appellants argue strenuously that even if the contract of February 9, 1923, was unauthorized because it was an attempt to do what this Court said in the Pan

American case was illegal, viz., to buy fuel depots with royalty oil, still the lease ought to stand as a lease, and only the contract of February 9, 1923, ought to be struck down. They argue that these two instruments are severable. The answer to this contention is found in the provisions of the lease itself.

The lease is one whereby, say the appellants, the United States reserved to itself several options. If perchance one of these options, *i. e.*, that to have storage built, proves to be illegal and void, then the United States may not denounce the contract, but it is bound to take those options which are lawful. Thus they say, let the United States take fuel oil in exchange, or let it take cash. Either of these would be perfectly lawful.

They seem entirely oblivious of the fact that this lease was made by officers of the United States who on its behalf purported to grant the lease on conditions and covenants made by the lessee as a consideration for that grant. One of those covenants was, and the officers who made the lease required that it should be, that the lessee upon demand would build steel tankage in exchange for the royalty oil. That was one of the conditions laid down as a cardinal condition of the making of the lease by Robison to Sinclair on the first occasion when Robison met Sinclair (R. 589; 627; 612). It is a new doctrine that when on behalf of a principal an agent makes a contract giving the principal certain rights, and the courts declare that certain of those rights reserved in that contract for the benefit of the principal are

illegal, that the principal is bound to carry out the contract albeit the principal cannot get those benefits stipulated for by his agent in that contract.

From the foregoing analysis of the lease and contract, we believe that this Court will conclude in this case, as it did in the Pan American case that:

> "The contracts and leases and all that was done under them are so interwoven that they constitute a single transaction not authorized by law and consummated by conspiracy, corruption and fraud."

The Court of Appeals said in the instant case (R. 810) that the supplemental contract was "inextricably interwoven with the lease."

Appellants cite a large number of cases dealing with illegal alternatives, which are wholly inapplicable. The classical instance evidenced by these cases is a contract between a municipality and an individual, whereby the municipality in consideration of certain things to be done by the individual agrees to grant certain rights to the individual. It turns out thereafter that the municipality acted *ultra vires* as to certain of these grants. The individual, upon discovering this fact, asserts that he is willing to go on and give to the municipality all the considerations stipulated in the original contract without requiring the municipality to make good to him all the grants made in the contract. Obviously if the grantee is willing to take part of that which he was to get for his consideration and still pay the municipality the

full consideration, the municipality cannot denounce the contract for illegality. The grants in such cases are treated as severable, and if the grantee is willing to take part performance the municipality cannot be hurt, because it is getting for part performance the whole consideration agreed to be given for full performance.

Such cases have no relevancy and no bearing upon such an issue as we have here. On the contrary the authorities are full and complete to the effect that in such a case as this it does not lie in the mouth of appellants to ask a court to rewrite the document and fasten upon the Government a lease wholly different from that which the officers of the Government attempted to make for it. Some of the authorities are:

Hazleton vs. Scheckells, 202 U. S. 71, (1906).

This was a suit for the specific performance of a contract to sell a piece of ground at an agreed price. The plaintiff was the purchaser under the agreement. The contract was in the form of an option running to the purchaser. Part of the consideration moving from the purchaser was services rendered by him in getting a bill through Congress to buy the land in question for public purposes. This consideration was illegal. The plaintiff could not have demanded a conveyance upon tendering the purchase price alone, and the seller could not have insisted upon the sale if the legislation had not been passed. Therefore, this Court said that the entire transaction

was void. Mr. Justice Holmes in delivering the opinion of this Court says at page 78:

> "**Every part of the consideration goes equally to the whole promise and therefore, if any part of it is contrary to public policy, the whole promise falls.** Pickering *v.* Ilfracombe Ry. Co., L. R. 3 C. P. 235, 250; Harrington *v.* Victoria Graving Dock Co., 3 Q. B. D. 549; Woodruff *v.* Hinman, 11 Vermont 592; Clark *v.* Ricker, 14 N. H. 44; McMullen *v.* Hoffman, 174 U. S. 639; Bishop *v.* Palmer, 146 Massachusetts 469, 474. According to the bill, and no doubt according to the fact, a part of the consideration was services, as we have quoted, and therefore it is not true, as argued, that the plaintiff could have demanded a conveyance on tendering the nine thousand dollars alone."

McMullen vs. Hoffman, 174 U. S. 639, (1898).

This was an action for an accounting under a partnership agreement. The agreement was in writing and on its face purported to provide for two construction companies sharing equally in the costs and the profits of a construction contract awarded by the City of Portland. The defendant showed that this written agreement was part of a larger agreement, a parol understanding, by which prior to the award of the contract, plaintiff and defendant were to put in bids known to each other, that fictitious bids should be put in without expectation or purpose of having them taken, and that if the contract were procured, they would perform the work as partners

in the partnership agreement. **The court held that the motives of the contract as thus disclosed were illegal and that no portion of the contract could stand in view of these illegal agreements.** The plaintiff wanted to prove and recover solely on the written contract which did not disclose any illegality. In holding that the contract was entire, this Court said that it was perfectly proper for defendant to introduce the parol portions of the contract in evidence, and that the Court must pass upon the entire contract as thus disclosed. Justice Peckham, in delivering the opinion of the Court says at pages 633-4:

> "The complainant cannot count only upon the contract of partnership as evidenced by the writing of March, 1893. That writing evidenced only a portion of the agreement that had been made between these parties, the result being that, although their agreement was in the first instance by parol, a portion of it was subsequently reduced to writing. The whole contract is none the less one and indivisible, just as much as if it had all been put in writing. If it had been, **it would scarcely be argued that complainant might maintain an action by relying on that part of it which was valid and relating to the partnership between them, and that he might discard or omit to prove that portion which was illegal.** If the complainant did not, the defendant could, prove the whole contract, as well the part lying in parol as that which was reduced to writing, so that the Court might, upon an inspection of the whole contract, determine therefrom its character. The unity of the contract is not severed or its meaning or

effect in any degree altered by putting part of it in writing and leaving the rest in parol."

See also:

Lingle vs. *Snyder*, 160 Fed. 627, (1908) (C. C. A. 8);

Western Indemnity Co. vs. *Crafts*, 240 Fed 1, (1917), (C. C. A. 6);

Townes vs. *Townes*, 270 Fed. 744, (1921) (C. C. A. 5);

Central Railroad of New Jersey vs. *United States Pipe Line Co.*, 290 Fed. 983, (1923);

Linebarger vs. *Devine*, 47 Nev. 67, (1923) (214 Pac. 532), (Affirmed on rehearing 217 Pac. 1101);

Orenstein vs. *Kahn*, 13 Del. Ch. 376, (1922) (119 Atl. 444);

La France vs. *Cullen*, 196 Mich. 726, (1917) (163 N. W. 101);

Williston on Sales, Vol. 2, Sec. 681, at pp. 1246-50;

13 *Corpus Juris (Contracts)*, Sec. 471, at pp. 513-14.

7. The making of the acquirement of the placer mining claims a part of the consideration was unlawful and voids the whole lease.

We have previously discussed the Pioneer and Belgo placer mining claims and the official reports thereon (pp. 71-74, *supra*). These claims were made the basis of various applications and proceedings before the Interior Department, the last of which were applications for leases under sections 18 and 18a of the General Leasing Act of February 25, 1920.

Those applications were denied by former Secretary Payne; and upon a petition for re-hearing, were again denied by Judge Finney. A petition for the exercise of supervisory powers by the Secretary of the Interior was then filed and was still pending before the Department.

The appellants in the courts below, stressed the fact that these claims were still in some form before the Interior Department at the time the negotiations for a lease with Sinclair were entered into and up to the time that the lease with Sinclair was closed. We were not able definitely to gather whether emphasis was laid on this fact by the appellants for the purpose of showing that these claims had to be dealt with, but we assume that that was their purpose.

If this be so, then we submit that there was a legal way to deal with these claims, and only one legal way so to do. The Act of June 4, 1920, by its very terms is inapplicable to any lands in the Naval Petroleum Reserves upon which there are pending claims for lease under the Act of February 25, 1920. The pending claims, if such there were in fact, could be recognized under no other act than the Act of February 25, 1920.

As to almost the entire area of Naval Reserve No. 3, therefore, the Act of June 4, 1920, could become applicable only upon the disposition of the applications for lease (see Sections 18 and 18a of the Act of February 25, 1920, 41 Stat. 451). The only lawful method of disposing of the pending applications, if they had any merit or any standing before the In-

terior Department after the Department's previous repeated action, was to hear them and either grant them or deny them. If they had been granted, then to the extent that leases were granted, the Act of June 4, 1920, would not have applied. If they were denied, then that action would have cleared the land definitely for leasing under the Act of June 4, 1920.

Fall elected to follow a wholly unauthorized and illegal method of dealing with these claims. He suggested to Sinclair that his proposition should include a surrender and quitclaim of all these claims to the United States; and he knew that Sinclair was dealing for them for a consideration of money or money's worth (R. 350, 656, 714).

Now it is quite clear that no lease under the Act of June 4, 1920, could be made for the lands covered by the pending applications under the Act of February 25, 1920, nor could any lease for the whole area be made under the Act of February 25, 1920, for the reason that Section 18 of that act forbids such a lease of greater extent than 3200 acres. Under the Act of February 25, 1920, the applicant for a lease must quitclaim his claims to the United States. When Sinclair tendered his quitclaim, therefore, he could have gotten a lease not in excess of the amount provided by Section 18 of the Act of February 25, 1920.

Nowhere does the Act of June 4, 1920, authorize the United States to give money or money's worth to a claimant to surrender his application for lease under the Act of February 25, 1920, or to surrender an al-

leged placer mining claim. Neither of the acts in question contemplate such a compromise and settlement with the United States, as was here made. Fall obviously could not have paid the money of the United States or given anything of value to the United States in settlement or compromise of these claims. He did this, however, by indirection rather than directly, by arranging that Sinclair should pay the money or the consideration to the claimants, and thus reduced the consideration payable to the United States under the Act of June 4, 1920, for a lease.

Fall's dealing with the placer mining claims and the applications for leases based upon them, was illegal in any aspect. The relinquishment of the claims was not a gift to the United States. Their surrender, as the testimony shows, was conditional upon the lease of the Reserve being executed to Sinclair's Company. Sinclair had agreed to pay one million dollars to the Pioneer and Belgo Companies for these placer mining rights (R. 346). Sinclair did not intend to be out of pocket that amount. He had arranged with the Pioneer and Belgo Companies that if he did not get the lease he would not have to pay. If he did get the lease, obviously he expected his reimbursement to come out of the oil produced from the property. Therefore, when Fall executed the lease and took as one of the considerations for it the surrender of the Pioneer and Belgo placer mining claims, the Government in substance and effect paid in oil for the surrender of the placer mining claims.

Payment in oil for claims of this sort was authorized by the Act of February 25th, 1920, provided the terms of that Act were complied with. This lease cannot be sustained under the Act of February 25th, 1920. It did not purport to be made under that Act. It violated the provisions of that act as to maximum acreage. It violated the provisions of that Act as to the disposition of royalty oil received by the United States. The dealing of Fall with the placer mining claims cannot, therefore, be sustained under the Act of February 25th, 1920.

Payment for the surrender of placer mining claims was unauthorized by the Act of June 4th, 1920. In fact, it was forbidden by that Act. The Act expressly attaches only to territory whereon no placer mining claims exist. Yet in making a surrender of the placer mining claims a condition and consideration for the awarding of the Mammoth lease, Fall did purport to make the Government pay for these claims. The transaction was illegal because wholly unauthorized by any law. It was harmful and detrimental to the Government because the consideration given by the Government was the right to take out oil from the lands. Just how much less royalty Sinclair offered by reason of the expenditure of one million dollars for these claims, no one is in a position to say. This uncertainty adds to the wrongful nature of the transaction.

We have shown that the dealing with the placer mining claims was illegal because wholly unauthorized. A public official cannot deal in his public

capacity with claims of this sort as if he were a private owner of the lands. This further illegal consideration for the lease is to be considered with all the illegal considerations heretofore noticed. No covenant of the Government based upon them can stand.

8. The award of the lease and contract without advertisement and competitive bidding was unlawful.

The provisions of the lease and contract for the building of storage facilities and the filling thereof with fuel oil certainly constitute the furnishing of supplies and of services other than personal services to the Government. In the Pan American case it was demonstrated and found as a fact that, while the Government purported to hold a competition between bidders for the building and filling of the Pearl Harbor fuel oil storage facilities, there was in truth no real competition whatever. Not even a pretense of competition was observed with reference to the instant lease and contract. And yet it is letter clear that Government contracts for supplies and services must be let by competitive bidding.

R. S. 3709 provides:—

> **"All purchases and contracts for supplies or services, in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public** exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or serv-

> ices required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals."

Appellants seek to overcome the force of this Act by the argument that the Act of June 4, 1920, was an independent code and not subject to the provisions of R. S. 3709. We have argued this matter in full in the brief submitted to this Court in the Pan American case; and therefore do not intend again to elaborate it at any length. Suffice it to say that this Court in its opinion in the Pan American case definitely negatived any such argument as appellants now make. It definitely held that the Act of June 4, 1920, did not repeal or supersede the general statutes dealing with the establishment and construction of fuel depots. It further held that the said Act did not repeal the general statutes requiring moneys received from the sale of gas products to be paid into the treasury. The language of this Court is as follows:

> "• • • The Act of August 31, 1842, 5 Stat. 77 (R. S. 1552), gave the Secretary authority to construct fuel depots. But it was taken away by the Act of March 4, 1913, 37 Stat. 898. Since that time Congress has made separate appropriations for fuel stations at places specifically named. And it has long been its policy to prohibit the making of contracts of purchase or for construction work in the absence of express authority and adequate appropriations therefor.

R. S. 3732, 3733; Act of June 12, 1906, 34 Stat. 255; Act of June 30, 1906, 34 Stat. 764. The Secretary was not authorized to use money received from the sale of gas products. All such sums are required to be paid into the Treasury, R. S. 3617, 3618, as amended, 19 Stat. 249."

In answer to a like argument made in the Pan American case, the Ninth Circuit Court of Appeals (*9 Fed. (2d) 761*) stated at p. 770 of the opinion:

"It is not conceivable that by the rider to the appropriation bill Congress intended in that casual way to surrender its legislative functions as to the control and disposition of the naval oil reserves and the establishment of fuel oil depots for the navy, to revolutionize the established method of transacting the public business of the United States, and to repeal, so far as they relate to the oil reserves, sections 3732 and 3733, Rev. Stat., and sections 6884, 6885, 6886 and 6873, Comp. St., which forbid the making of contracts to bind the government beyond the amount appropriated therefor, unless otherwise specifically provided, and **section 3709, Rev. Stat., being Comp. St. section 6832, which makes competitive bidding and advertising indispensable to the making of all such contracts,** and sections 3617 and 3618 of Rev. Stat., being Comp. St. sections 6666, 6669, which make it obligatory to turn into the Treasury of the United States all proceeds of sales of royalty oils as was done prior to June 4, 1920, and as was expressly provided by the Act of February 25, 1920 (Comp. St. Ann. Supp. 1923, sections 4640^{1}_{4}-4640^{1}_{488}). If such had been

> the intention, it is but reasonable to assume that it would have been expressed in terms so clear as to exclude all doubt."

In view of the holdings of this Court and the Court of Appeals in the Pan American case, we submit it is too late to make the argument that the Act of June 4, 1920, is an independent code, sufficient unto itself (Mammoth Brief, pp. 188-193).

9. The lease and contract contemplated the erection of fuel depots not authorized by Congress.

Appellants make the argument (Mammoth Brief, pp. 178-9) that neither the lease nor the so-called collateral agreement therein contained provides for any fuel depot or for any designated storage project or for the erection of any storage. Further, as to the supplemental agreement of February 9, 1923, they state that the record does not indicate that any of the tankage at Portsmouth or elsewhere contemplated thereby is in the least akin to the choosing or selecting or creating or constructing of any fuel depot. Counsel have not carefully read the record. Robison testifies (R. 611):

> "The fuel stations to be established under the Pan American contract of April 25th, or under the Mammoth Oil Company contract of April 7th, were to be complete reserve fuel stations. They are what are known in appropriations as fuel depots."

Again Robison testified (R. 637):

> "It was always the intention of the Navy Department and of the Interior Department, when the contracts were being discussed, and being made, to use all of the oil certificates under this Mammoth Oil contract for fuel and other petroleum products in tanks to be built and to constitute naval fuel reserve depots."

Again Robison says (R. 654):

> "By that I meant that after we transformed the royalty into cash we could not thereafter legally use any of that cash. The cash had to go into the Treasury miscellaneous receipts and could only be gotten out by appropriation; so that unless we could accomplish this business as a whole, including the provision of the fuel reservoirs at our naval stations, without the transformation of the royalty into another form than a means of exchange between the royalty itself, and the finished fuel depots, I think are the words you used, we had no legal right, and this was one way that I know of that we could do what we felt the nation needed, so we did it."

We call attention also to the fact that in Article I of the contract of February 9, 1923 (R. 38), project "B" is designated "Naval Fuel Depot, Melville, Rhode Island," and project "D" is designated "Naval Fuel Station, Yorktown, Va."

We further call attention to the fact that the testimony of Admiral Parks shows that on October 7, 1918, as representing the Navy, he requested of the

Committee on Appropriations of the House of Representatives an appropriation of $322,500 for coal and fuel oil storage to complete the project for tank construction at Yorktown, Va., which is one of the projects mentioned in the contract of February 9, 1923 (R. 433-4). The same witness, at R. 434, testifies that in the consideration of the naval appropriation bill for 1922 he requested an appropriation in the sum of $1,836,000 for depots for coal and other fuel, including the sum of $129,988 for such use at Melville, R. I., which is likewise one of the projects mentioned in the contract of February 9, 1923.

Congress did not make the appropriations.

The storage facilities to be constructed by the Mammoth Oil Company and to be paid for in oil certificates are confessedly not only "fuel depots" but also form part of that "fuel depot" building plan, involving the ultimate expenditure on the Atlantic and Pacific Coasts of approximately $103,000,000. In the Pan American case this Court definitely held that no such program had been authorized by Congress:

> . . . The record shows that the Navy Department estimated the cost of proposed storage plants and contents at approximately $103,000,000. Congress has not authorized any such program. The Department tried and failed to secure additional appropriations for the Pearl Harbor storage facilities. The Act of August 31, 1842, 5 Stat. 577 (R. S. 1552), gave the Secretary authority to construct fuel depots. But it was taken away by the Act of March 4, 1913,

37 Stat. 898. Since that time Congress has made separate appropriations for fuel stations at places specifically named."

In view of the above testimony, which we may add is all of the testimony in the record on the subject, and in view of the conclusion reached by this Court in the Pan American case on the subject of fuel depots, can there be any room for the argument that the lease and contract did not contemplate the building of fuel depots unauthorized by Congress or that such storage facilities were not illegal?

F. SINCLAIR CRUDE OIL PURCHASING COMPANY AND SINCLAIR PIPE LINE COMPANY ARE NOT ENTITLED TO ANY MODIFICATION OF THE DECREE OF THE COURT OF APPEALS.

1. The court found these appellants were *mala fide* trespassers.

There can be no question that a fraudulent or *mala fide* trespasser upon the public domain must cease to trespass and cannot be allowed the value of any fixed or permanent improvements placed upon the land. One of these appellants placed a pipe line on the surface of the Reserve as the "nominee of Mammoth Oil Company." It will be remembered that Article II of the lease of April 7, 1922, provided that when a certain production was reached Mammoth Oil Company should construct a pipe line which would serve the Salt Creek field and Naval Petroleum Reserve No. 3 (R. 18-20). That article provided that Mammoth Oil

Company might, in lieu of constructing this pipe line itself, have the same constructed by a nominee (R. 18).

Although by December, 1922, Mammoth Oil Company had not reached that stage of the development of Teapot Dome which called for the construction of a pipe line, it did then become the purchaser of the Salt Creek royalty oils running to the Government on the various government leases in the Salt Creek field and it did then make an arrangement or agreement with Secretary Fall that it would begin the construction of a pipe line and it was agreed to arrange that the Sinclair Pipe Line Company, or some subsidiary of Sinclair Pipe Line Company, should construct the pipe line (see the formal agreement to this effect R. 84 ff.). These facts in and of themselves are persuasive evidence of the close community of interest of Mammoth Oil Company and Sinclair Pipe Line Company.

As soon as Mammoth Oil Company started development of the Reserve some facilities were required for storing crude oil until the same could be moved either through a pipe line or otherwise. Mammoth Oil Company therefore provided large steel storage tanks to hold the crude oil as it came from the ground. Not until January, 1923, did Mammoth Oil Company make arrangements to sell and turn over these tanks (and apparently the oil contained therein) to Sinclair Crude Oil Purchasing Company (R. 74).

The Court of Appeals held that both of these companies were *mala fide* trespassers because they were

affected with notice and knowledge of the circumstances surrounding the making of the lease of April 7, 1922 (R. 850-51). We submit that the Court of Appeals was justified in so holding.

The Sinclair Pipe Line Company admittedly is owned one half by the Sinclair Consolidated Oil Corporation and one half by the Standard Oil Company of Indiana (R. 559-60; 613; 676). The Sinclair Crude Oil Purchasing Company is likewise owned half and half by said two concerns (R. 457; 676). The record shows that when the Sinclair Crude Oil Purchasing Company was to act in the Continental Trading Company matter, Sinclair and R. W. Stewart, President of the Standard Oil Company of Indiana had the power to control its action, to speak for it and to bind it by contracts made on its behalf (R. 448; 450). That Sinclair was the controlling factor in Mammoth Oil Company (R. 567) and in Sinclair Consolidated Oil Corporation is also disclosed by the record (R. 551-52; 556; 560).

Appellants seek to avoid constructive notice through Sinclair by claiming that he occupied an antagonistic position (Sinclair Pipe Line Brief, p. 11). He did not occupy an antagonistic position. All that he could make out of the transaction would be made through his stock ownership in the three appellant corporations. Under similar circumstances, this Court had no difficulty in charging the Pan American companies with notice of Doheny's fraud.

Before the arrangements above mentioned were made either with Sinclair Crude Oil Purchasing Com-

pany or Sinclair Pipe Line Company, the Senate of the United States, acting upon charges of fraud, collusion and bad faith made before it, had by two resolutions initiated an investigation of the circumstances surrounding the making of the lease. The Senate resolutions in question were passed respectively on April 29, 1922, and June 5, 1922, and are numbered 282 and 294. Concerns so closely connected with Mammoth Oil Company and having dealings subsequent to the passing of these resolutions and to the public agitation with respect to the fraudulent character of the lease were certainly, as a matter of fact, upon notice of the question of the good faith of Mammoth Oil Company which had been publicly raised. Senate Document 210, Fall's answer to the inquiry of the Senate, was sent to the Senate on June 3, 1922, and was obviously an attempted answer to the allegations of fraud made in the lease. This document was given the widest publicity.

Not only may this Court take judicial notice of Senate Resolutions Nos. 282 and 294 and the wide publicity given to their passage and the impending investigation by the Senate into rumors and charges of fraud in the leasing of the Teapot Dome (Swift & Co. *vs.* Federal Trade Commission, 8 Fed. (2d) 595, 1925; Tempel *vs.* United States, 248 U. S. 121, 1918; Simpson *vs.* United States, 252 U. S. 547, 1920); but also notice to and knowledge by all the directors of the appellant companies of said Senate Resolutions and the impending investigation may also be implied and presumed (Foster *vs.* Mansfield, etc.,

R. R. Co., 146 U. S. 88, 1892; Board of Commissioners *vs.* Chicago, etc., Ry. Co., 18 Fed. 209, 1883; Wright *vs.* Stewart, 130 Fed. 905 (1904); and Charles *vs.* Roxana Pet. Corp., 282 Fed. 983, 1922, certiorari denied 261 U. S. 614).

We submit, therefore, that there can be no question of the close community of interest and the effective managerial control between Sinclair's company, Mammoth Oil Company, and what were in effect Sinclair's companies, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company; and that Sinclair's transactions, if fraudulent with respect to the lease and operation of Teapot Dome, ought to affect these corporations claiming under the alleged rights acquired by Sinclair in the lease just as much as they ought to affect Sinclair's company, Mammoth Oil Company.

2. These appellants participated in the violation of the public policy of the United States involved in the lease to Mammoth Oil Company.

This Court has found in the Pan American case:

> "The grant of authority to the Secretary of the Navy (by the Act of June 4, 1920) did not indicate a change of policy as to the conservation of the Reserves. The Act of June 25, 1910, the Act of February 25, 1920, the Executive Orders, and the Joint Resolution of February 8, 1924, show that it has been and is the policy of the United States to maintain a great naval petroleum reserve in the ground."

The appellants in this cause were all upon notice of that public policy. The very resolutions requiring

the Senate Committee on Public Lands and Surveys to investigate the Mammoth lease referred to that preservation policy long before Sinclair Crude Oil Purchasing Company or Sinclair Pipe Line Company came into the picture. These two companies in close association with Sinclair cooperated in the carrying out of the program which flew in the face of and violated the long established public policy of the United States and which despoiled it of those public lands dedicated for the exclusive use or benefit of the Navy in the manner set forth in this Court's opinion in the Pan American case.

Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company no less than Mammoth Oil Company became parties to a subversion of this public policy and are no less than Mammoth Oil Company guilty of an attempt to violate it. It must have been here, as it was declared in the Pan American case to have been, "the purpose of those making the contracts and leases to subvert the laws and defeat the policy of the United States established for the conservation of the Naval Petroleum Reserves."

In such cases this Court has declared in no uncertain terms that the doctrine of **Causey vs. United States, 240 U. S. 339, United States vs. Trinidad Coal Company, 137 U. S. 160, and Heckman vs. United States, 224 U. S. 413** (two of which were cited and relied on by the Court of Appeals) held that the parties to illegal contracts subversive of the public policy of the Government are not entitled to any equity

or to any consideration or to the value of their improvements.

We submit that in this respect the position of the appellants, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, is untenable, first, because in fact they are little different from ordinary subsidiaries of the Sinclair Consolidated Oil Corporation, which Sinclair himself controlled, and second, they made themselves, after full notice of the public policy of the United States concerning its Naval Petroleum Reserves, parties to an attempted subversion of that public policy. We submit, therefore, that the decree of the Court of Appeals as respects them, was correct and should not be modified.

G. CONCLUSION.

Upon the grounds (1) that the findings of the Court of Appeals of fraud, conspiracy and collusion are sustained by the evidence; (2) that the lease and contract in this case were subversive of the public policy of the United States, were contrary to law and were unauthorized by the Act of June 4, 1920, and (3) that all of the parties appellants to this record are affected by both the fraud and the violation of public policy, we respectfully submit that the decree of the Court of Appeals should in all respects be affirmed.

Respectfully submitted,

ATLEE POMERENE,
OWEN J. ROBERTS,
Special Counsel for the United States.

APPENDIX.

1. Executive order of withdrawal of April 30, 1915.

ORDER OF WITHDRAWAL.

Naval Petroleum Reserve No. 3, Wyoming No. 1.

It is hereby ordered that all lands hereinafter described and heretofore forming a part of Petroleum Reserve No. 8, withdrawn on July 2, 1910, from settlement, location, sale or entry and reserved for classification and in aid of legislation under the authority of the Act of Congress approved June 25, 1920 (36 Stat., 847), entitled "An act of Congress approved June 25, 1910 (36 Stat., 847), entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August 24, 1912 (37 Stat., 497), shall hereafter constitute Naval Petroleum Reserve No. 3, and shall be held for the exclusive use or benefit of the United States Navy until this order is revoked by the President or by Congress. To this end and for this public purpose the order of July 2, 1910, is modified and the withdrawal of that date is continued and extended insofar as it affects these lands.

Sixth Principal Meridian.

T. 38, N., R. 78 W.,
Sec. 2, SW.¼ of NE.¼, W.½ W½ of SE¼;
Sec. 3, all;
Sec. 4, NE¼, NE¼ of NW¼, N½ of SE¼, SE¼ of SE¼;
Sec. 9, E½ of NE¼, NE¼ of SE¼;

Sec. 10, all;
Sec. 11, W½ of NE¼, W½, SE¼;
Sec. 14, all;
Sec. 15, N½, N½ of SW¼, SE¼ of SW¼, SE¼;
Sec. 22, NE¼, NE¼ of NW¼, E½ of SE¼;
Sec. 23, all;
Sec. 26, NW¼ of NE¼, N½ of NW¼.

T. 39 N., R. 78 W.,

Sec. 16, NE¼ of SW¼, S½ of SW¼, SW¼ of SE¼;
Sec. 20, E½ of NE¼, SE¼;
Sec. 21, all;
Sec. 22, SW¼ of NW¼, SW¼;
Sec. 27, W½ of NE¼, W½, SE¼;
Sec. 28, all;
Sec. 29, E½, E½ of NW¼, N½ of SW¼, SE¼ of SW¼;
Sec. 32, N½ of NE¼, SE¼ of NE¼;
Sec. 33, N½, N½ of SW¼, SE¼ of SW¼, SE¼;
Sec. 34, all;
Sec. 35, SW¼ of NW¼, W½ of SW¼, SE¼ of SW¼.

WOODROW WILSON.
President.

30 April, 1915.

2. Act of June 4, 1920 (41 Stat. 812).

Investigation of Fuel Oil and Other Fuel: For an investigation of fuel oil, gasoline, and other fuel adapted to naval requirements, including the question of supply and storage and the availability economically and otherwise of such supply as may be allowed by the naval reserves on the public domain, and for such other expenses for transportation and hire of vehicles in connection with naval petroleum reserves, as the Secretary of the Navy may deem appropriate, for the purchase of necessary instruments and appliances, for the extension of the naval fuel-oil testing plant at the navy yard, Philadelphia, Pennsylvania, and the temporary employment of civilian experts and assistants $30,000: *Provided*, That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled "An Act to provide for the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the

United States: *And provided further,* That the rights of any claimant under said act of February 25, 1920, are not affected adversely thereby: *And provided further,* That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922: *Provided further,* That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct.

3. Executive order of May 31, 1921.

EXECUTIVE ORDER.

Under the provisions of the Act of Congress approved February 25, 1920 (41 Stat. 437), authorizing the Secretary of the Interior to lease producing oil wells within any naval petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder or any part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat. 812), directing the Secretary of the Navy to conserve, develop, use, and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves, the administration and conservation of all oil and gas bearing lands in naval petroleum reserves Nos. 1 and 2, California, and naval petroleum reserve No. 3 in Wyoming, and naval shale reserves in Colorado and Utah, are hereby committed to the Secretary of the Interior subject to the supervision of the President, but no general policy as to drilling or reserving land located in a naval reserve shall be changed or adopted except upon consultation and in cooperation with the Secretary or Acting Secretary of the Navy. The Secretary of the Interior is authorized and directed to perform any and all acts necessary for the protection, conservation, and administration of the said reserves, subject to the conditions and limitations contained in this order and existing laws or such laws as may hereafter be enacted by Congress pertaining thereto.

WARREN G. HARDING.

THE WHITE HOUSE,
May 31, 1921.

SUPREME COURT OF THE UNITED STATES.

No. 140.—October Term, 1927.

Mammoth Oil Company, Sinclair Crude Oil Purchasing Company, and Sinclair Pipe Line Company, Petitioners, *vs.* United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[October 10, 1927.]

Mr. Justice Butler delivered the opinion of the Court.

This suit was brought by the United States against the petitioners in the District Court of Wyoming to secure the cancelation of an oil and gas lease made by the United States to the Mammoth Oil Company April 7, 1922, and to set aside a supplemental agreement made by the same parties February 9, 1923. An accounting and possession of the leased lands and general relief were also demanded. The complaint alleged that the lease and agreement were made without authority of law and in consummation of a conspiracy to defraud the United States. The District Court held that the transaction was authorized by the Act of June 4, 1920, 41 Stat. 812, 813, found that there was no fraud, and dismissed the case. 5 F. (2d) 330. The Circuit Court of Appeals sustained that construction of the Act; but, on an examination of the evidence, held that the lease and agreement were obtained by fraud and corruption, reversed the decree and directed the District Court to enter one canceling the lease and agreement as fraudulent, enjoining petitioners from further trespassing on the leased lands and providing for an accounting by the Mammoth Oil Company for all oil and other petroleum products taken under the lease and contract. 14 F. (2d) 705.

The lease covered 9,321 acres in Natrona County, Wyoming—commonly known as Teapot Dome—being Naval Reserve No. 3 created April 30, 1915, by an executive order of the President made pursuant to the Act of June 25, 1910, c. 421, 36 Stat. 847, as amended August 24, 1912, c. 369, 37 Stat. 497. The part of

the Act of June 4, 1920 relied on to sustain the lease contains the following: "*Provided*, That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves . . . to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States: . . . . *And provided further*, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922."

March 5, 1921, Edwin Denby became Secretary of the Navy and Albert B. Fall, Secretary of the Interior. May 31, 1921, the President made an order purporting to commit the administration of all oil and gas bearing lands in the naval reserves to the Secretary of the Interior, subject to the supervision of the President. The lease and agreement were signed for the United States by Fall as Secretary of the Interior and by Denby as Secretary of the Navy. The evidence shows that the latter was fully informed as to the substance of the transaction, and it is not necessary here to consider the validity or effect of the executive order.

The purpose and scope of the lease and agreement may be indicated by a statement of their principal features. The preamble to the lease stated that it was the duty of the Government to secure and store oil for the Navy; that the Government desired to avoid the loss of oil resulting from the drilling of wells outside the reserve, to create a market and receive the best prices obtainable for royalty oil from the Salt Creek field [adjoining the reserve on the north], to exchange royalty oil from the reserve for fuel oil for the Navy and to secure facilities for the storage of such fuel oil; and that the Government proposed to secure these objects by entering into a contract providing for the development and exploitation of the oil and gas within the reserve and for the construction of a pipe line, if necessary, for the transportation of royalty oil from the reserve and from the Salt Creek field.

The lease granted to the company the exclusive right to take and dispose of oil and gas so long as produced in paying quantities. The lessee agreed to drill test wells and, after their com-

pletion, fully to develop the reserve, to construct, or cause its nominee to construct, a common carrier pipe line [about 1,000 miles in length] from the leased lands to a line from the mid-continent field to Chicago; to pay as royalties specified percentages of products taken from the land; to purchase all royalty oil when and as produced, and in payment to set up an oil exchange credit to the lessor and issue certificates showing the amount and value of royalty oil received by lessee. It was provided that lessee would redeem the certificates by giving lessor credit on its obligations to lessee for the construction of tanks to store fuel oil for the Navy under the agreement contained in the lease for the exchange of crude oil for fuel oil storage, or by delivering to lessor fuel oil or other products of petroleum for the use of the Navy, or by cash under certain conditions. And it was agreed that the lessee, when requested by the lessor, would construct or pay the cost of constructing steel tanks necessary for such storage; that lessor would pay in oil certificates of face value equal to such cost; that in exchange for crude oil lessee would deliver fuel oil and other petroleum products for the Navy at places* on the Atlantic Coast, the Gulf of Mexico, and at Guantanamo Bay, Cuba. Lessee agreed diligently to drill and continue operations of oil wells unless by the Secretary of the Interior permitted temporarily to suspend operations. And it was provided that, with the consent of the Secretary of the Interior, the lease might be terminated. By a separate agreement dated December 20, 1922, the lessee designated, and the lessor accepted, the Sinclair Pipe Line Company as the nominee of lessee to construct the pipe line, having a daily capacity of 40,000 barrels.

The supplemental agreement of February 9, 1923 relates to storage tanks to be provided by the lessee. It deals with four projects covering construction work at Portsmouth, Melville, Boston and Yorktown. The total capacity—some expressed in tons and

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*Houston, Tex.
Pensacola, Fla.
New Orleans, La.
Charleston, S. C.
Annapolis, Md.
Indian Head, Md.
New York, N. Y.
Machias, Me.
Portsmouth, N. H.
Boston, Mass.
Melville, R. I.
Woods Hole, Mass.
New Haven, Conn.
Guantanamo Bay, Cuba.
Key West, Fla.
Mobile, Ala.
Washington, D. C.
Baltimore, Md.
Norfolk, Va.
Philadelphia, Pa.
Bath, Me.
Rockland, Me.
Quincy, Mass.
Block Island, R. I.
New London, Conn.
Bridgeport, Conn.
Fall River, Mass.

some in gallons—to be constructed at these places was sufficient to store 2,550,000 tons of fuel oil, 37,500 tons and 625,000 gallons of Deisel oil, 26,500 tons and 2,330,000 gallons of gasoline, 13,800 tons and 1,161,000 gallons of lubricating oil. The lessee agreed to provide the tanks and fill them in exchange for royalty oil certificates. The Government was not obligated to lessee otherwise than to deliver it oil certificates for redemption in accordance with the lease, and until the agreement was fully performed all certificates received by the Government were to be used for constructing and filling storage for fuel oil and other petroleum products. And it was further provided that upon completion of these projects other facilities for the storage of petroleum products required by the Navy were to be constructed and filled by the lessee.

The evidence shows that the storage facilities to be furnished under the lease were to be complete reserve fuel stations, such as are known in the Appropriation Acts as "fuel depots"; that the arrangement to use royalty oil to pay for such construction was made for the purpose of evading the requirement that the proceeds of the royalty oil, if sold, be paid into the Treasury, and to enable the Secretary of the Navy to locate, plan and have constructed fuel stations that had not been authorized by Congress; that the approximate cost of construction so to be done on the Atlantic Coast would be at least $25,000,000, of that on the Pacific under arrangement with the Pan American Petroleum and Transport Company $15,000,000, and for the whole program—including the products to be put into these fuel depots when constructed—a little in excess of $100,000,000. The cost of the pipe line is not included in any of these figures. It was not deemed to be a facility merely for the development of the reserve, but was desired by those acting for the Government for the transportation of oil obtained in that part of the country, to create competition in the oil market, and as an instrumentality for national defense in case of war.

A construction of the Act authorizing the agreed disposition of the reserve would conflict with the policy of the Government to maintain in the ground a great reserve of oil for the Navy. Joint Resolution, approved February 8, 1924, 43 Stat. 5. It would restore to the Secretary of the Navy authority, of which he had recently been deprived, to construct fuel depots without ex-

press authority of Congress. Act of August 31, 1842, 5 Stat. 577, (R. S. § 1552); Act of March 4, 1913, 37 Stat. 898. It would put facilities of the kind specified outside the operation of the general rule prohibiting the making of contracts of purchase or for construction work in the absence of express authority and adequate appropriations therefor. R. S. §§ 3732, 3733; Act of June 12, 1906, 34 Stat. 255; Act of June 30, 1906, 34 Stat. 764. It would be inconsistent with the principle upon which rests the law requiring purchase money received on the sale of government property to be paid into the Treasury. R. S. §§ 3617, 3618. While, in order to make the petroleum products available for the Navy, the Act deals with reserve lands as a separate class, there is nothing to indicate a legislative purpose to reverse the policy of conservation or to relax the safeguards as to fuel depots and contracts for their construction, set by prior legislation. The authority to "store" or to "exchange" does not empower the Secretary of the Navy to use the reserves to regulate or affect the price of oil in the Salt Creek field or to induce or aid construction of a pipe line to serve that territory. And it does not authorize the Secretary to locate the fuel stations provided for or to use the crude oil to pay for them. The Mammoth Oil Company insists that, even if other elements be held unauthorized, the transaction may be sustained as a lease granting the right to take the oil and gas in consideration of the development of the property and delivery of the royalty oils or the equivalent in cash. That view cannot prevail. The percentages of the product to be retained by the lessee includes the consideration, however indeterminate in amount, for the construction of the pipe line. Presumably, the lessee's undertaking to provide it induced the lessor to accept less than otherwise would have been asked or given. Cf. *Hazelton* v. *Sheckells*, 202 U. S. 71.

So far as concerns the power under the Act of June 4, 1920 to make them, the lease and agreement now before the court cannot be distinguished from those held to have been made without authority of law in *Pan American Petroleum and Transport Company* v. *United States*, — U. S. —. And the United States is entitled to have them canceled.

Were the lease and supplemental agreement fraudulently made? The decisions below are in conflict, and we have considered the evidence to determine whether it establishes the charge. The com-

plaint states that the lease and agreement were made as the result of a conspiracy by Fall and H. F. Sinclair to defraud the United States; that Fall acted for the United States and Sinclair acted for the Mammoth Oil Company; that the negotiations were secret and the lease was made without competition; that responsible persons and corporations desiring to obtain leases were by Fall in collusion with Sinclair denied opportunity to become competitors of the Mammoth Company; that a company known as the Pioneer Oil Company asserted a mining claim to lands in the reserve; that the claim was worthless and known to be so by Fall; that he had Sinclair procure a quitclaim deed covering the valueless claim and, then to make it impossible for others to compete with Sinclair's company, Fall made its transfer condition the granting of the lease; that Fall agreed with one Shaffer that Sinclair would cause a part of the leased lands to be set aside for the benefit of Shaffer, and required Sinclair, in order to get the lease for the Mammoth Company, to agree that Shaffer should have a sublease on some of the land; that before and after the making of the lease Fall kept the negotiations and execution secret from his associates, the Congress and the public. And, in general terms, the complaint charges that Fall and Sinclair conspired to defraud the Government by making the lease without authority and in violation of law and to favor and prefer the Mammoth Company over others.

As is usual in cases where conspiracy to defraud is involved, there is here no direct evidence of the corrupt arrangement. Neither of the alleged conspirators was called as a witness. The question is whether the disclosed circumstances prove the charge. When Fall became Secretary, Reserve No. 3 had already attracted the attention of oil operators. His predecessor, Secretary Payne, had arranged to offer highest bidders 15 leases in the Salt Creek field. These covered areas ranging from 160 to 640 acres, amounting in all to 6,400 acres. The royalties averaged 28.76 per cent. June 15, 1921, the leases were auctioned. Bonuses offered in excess of the specified royalties amounted in all to $1,687,000, and the leases were granted on that basis. That field was very productive. The reserve compared favorably with it, and was considered very attractive by all having knowledge of the structure. Obviously oil men would be interested in the opening of the reserve and the putting of its product on the market.

From the beginning Fall was keen to control the leasing of the naval petroleum reserves. Commander H. A. Stuart had been put in charge of naval reserve matters by Secretary Daniels; he continued as special aide to Denby, and was well qualified for that service. Early in April, 1921, Fall asked Assistant Secretary Edward C. Finney, who had long been in the Interior Department, to suggest someone who could handle naval reserve matters. Finney recommended, and Fall appointed, Doctor W. C. Mendenhall of the Geological Survey. Early in May, Fall had a memorandum prepared by Finney to disclose what power or authority in respect of the reserves could be delegated to Fall. Finney reported that the President might commit to the Secretary of the Interior the authorization of such additional wells or leases within the naval reserves as the President by § 18 of the Leasing Act was empowered to permit or grant; that under the Act of June 4, 1920, the Secretary of the Navy might request him to handle the conservation, development and operation of the naval reserves. And May 11, Fall sent Denby a letter inclosing for his approval a draft of a proposed executive order and a form of letter addressed to the President to be signed by Denby, requesting that the order be made. Fall said: "Referring to our conversation yesterday, and to your suggestion to the President that the Secretary of the Interior be placed in charge of administration of the laws relating to naval reserves, I am submitting herewith for your consideration a brief memorandum stating the facts and law with respect to naval reserves, a tentative form of letter for your signature if it meets with your approval, and a form of Executive order for the President's signature if it meets your suggestions of yesterday . . . If they meet with your approval and no changes occur to you, kindly return them with your approval, in order that the matter may be taken up with the President." While this letter contains language calculated to indicate that Denby initiated the matter, the context and attending facts clearly show that Fall was eager to get the authority proposed to be given him.

Denby was not called as a witness, but the circumstances indicate that he intended to be passive and let Fall dominate. He sent Fall's form of executive order to Assistant Secretary Roosevelt and the Chief of the Bureau of Engineering, Admiral R. S. Griffin. After consideration of the matter by them and other of-

ficers of the Navy, including Commanders Stuart, J. F. Shafroth and E. A. Cobey, the Assistant Secretary told Denby that he thought that the property should not be turned over to the Interior Department. Denby replied that the matter had been decided by the President, Fall and himself. Later the Assistant Secretary took to Denby a suggestion, prepared by him and his associates, for the amendment of the proposed order. Denby said: "If you can get Fall to agree to this modification, then it will be all right with me." Fall agreed to the change, and the President signed the form of order as amended. Its pertinent provisions follow: "The administration and conservation of all oil and gas bearing lands in naval petroleum reserves . . . are hereby committed to the Secretary of the Interior subject to the supervision of the President, *but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in cooperation with the Secretary or Acting Secretary of the Navy.*" We italicize words added as a result of the suggestion of Denby's subordinates. The executive order as signed by the President was what Fall wanted and, so far as concerns the matters here involved, it was not substantially different from the draft he submitted to Denby.

Soon after the order was made, 22 offset wells in Reserve No. 1 were given to companies represented by E. L. Doheny and one McMurray, respectively. In connection with that matter Fall had some trouble with Mendenhall and Stuart and expressed himself as "dissatisfied with both of them." Thereafter, neither of them was given anything to do in respect of reserve leases. July 8, 1921, Fall wrote Doheny a letter containing the following: "There will be no possibility of any further conflict with Navy officials and this Department, as I have notified Secretary Denby that I should conduct the matter of naval leases, under the direction of the President, without calling any of his force in consultation unless I conferred with himself personally upon a matter of policy. He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau of his department, but only with himself, and such consultation will be confined strictly and entirely to matters of general policy." This exultant declaration that he was in position to handle these vast properties as he pleased discredits Fall. His desire to get con-

trol of the reserves and then so proclaim that he had it strongly suggests that he was willing to conspire against the public interest. And that inference is confirmed by his subsequent conduct.

By letter to Denby of July 23, Fall suggested the thought that royalty oil might be used to pay for fuel depots to be located and planned by the Navy. That idea seems not to have originated in the Navy. Such use of royalty oil was an essential element in any arrangement involving the prompt exhaustion of the reserves. It was the foundation of the scheme culminating in the lease. Denby by letter to Fall of July 29 indicated his acquiescence. Soon thereafter Fall left Washington for the West, declaring that he was going to discuss the matter with oil men "with the idea of working up some such arrangement." He returned about the middle of October. In the meantime Admiral John K. Robison was appointed to succeed Admiral Griffin as Chief of the Engineering Bureau. Denby directed Robison to take personal charge of all naval petroleum matters. Commander Stuart was relieved from all duties in reference to them. The record shows no reason for the removal of Stuart, but it does appear that Fall favored the change and that Denby knew it.

Immediately after he was given charge, Robison investigated and found that Reserves Nos. 1 and 2 were suffering loss from drainage and that Reserve No. 3 was not. He testified that he thought the latter pretty secure but not absolutely so. He read Fall's letter of July 23, suggesting the use of royalty oil to pay for storage tanks, and he made working arrangements with Fall, which were confirmed by a letter of October 25, prepared by Robison and signed by Denby and sent to Fall. They agreed that Fall was to control the making of all leases for the drilling of wells in the naval reserves and for the disposition of the products; that he would have necessary offset wells drilled in Reserves Nos. 1 and 2, but that the development of Reserve No. 3 would not be undertaken except to protect it against depletion by others; that the Navy was to receive fuel oil for royalty oil; that so much of the royalty oil as was not exchanged for fuel oil would be used to obtain storage at places to be designated by the Navy; and that the terms of the conversion should be submitted to the Navy for approval as to qualities, deliveries, engineering and other features involved.

Denby did not actively participate; but, in conferences with Fall, he was represented by Robison. Fall personally conducted

the negotiations with Sinclair. And he contemporaneously arranged with Doheny the contract that was set aside for fraud in the *Pan American Case, supra.* Under the Secretary, Finney usually acted for the United States in making oil and gas leases, and he was authorized to sign them. But he was not consulted as to the terms of the naval reserve leases made to the Mammoth Company represented by Sinclair or to the Pan American Petroleum and Transport Company represented by Doheny. Robison through Fall undoubtedly exerted influence as to the provisions for the pipe line and fuel stations, but Fall acted for the United States and dominated in all matters substantially affecting the value of the lease. And it is significant that by the terms of the lease the Secretary of the Interior was authorized to permit the lessee temporarily to suspend production or to assign or terminate the lease.

November 30, at a meeting of the Secretary's Council, consisting of important officers in the Navy, Robison advised, and it was decided, that the oil reserves should not be used to supply fuel oil for current use. He urged that leases be made and royalty oil exchanged for fuel oil and storage constructed by the lessees at places to be designated by the Navy. Denby at first queried whether the exchange was authorized by law, and Robison called for the advice of the Judge Advocate General of the Navy. He answered affirmatively and, in the course of his opinion, said: "The authority granted 'to exchange' is unrestricted, i. e. the Act does not specify nor limit what may be taken in exchange for the oil and its products." Denby approved the opinion and authorized the proposed exchange. Robison prepared a letter which Denby signed and sent to Fall, quoting the Judge Advocate General, and stating that Denby desired the Interior Department to make exchanges of crude oil for fuel oil and storage and that Robison had been designated to handle the details.

Then Fall went to his ranch at Three Rivers, New Mexico, where, December 31, came Sinclair and his counsel, J. W. Zevely, to see him—as the latter testified—on some business connected with Osage Indian leases. They remained two days. The showing as to what transpired concerning the Teapot Dome is meager. The record contains no statement from Fall or Sinclair. H. F. Bain, Director of the Bureau of Mines, was there for a day, but the leasing

of the reserve was not mentioned in his hearing. Zevely testified that he was not sure whether the subject was mentioned in his presence, but he thought inquiry was made of Fall as to whether he would lease the Teapot Dome and that Fall said he was having an investigation made "and upon that report he would probably determine whether or not he would lease" it. Nothing more is directly disclosed. But, soon after Fall and Sinclair met at the ranch, Fall caused his office force to investigate pending claims to land in the reserve and directed a report to be made to him on his return. Evidently he was considering leasing the reserve as a whole.

Fall reached Washington January 27 and, after conference with Robison, it was decided to develop all of Reserve No. 3. He sent for Sinclair and Zevely and had Robison tell them what would be necessary in any proposal for a lease. Robison told Sinclair that the whole reserve should be developed, that a pipe line adequate to serve the field should be constructed, and that royalty oil should be used to obtain fuel oil and to pay for storage facilities. And February 3, Sinclair wrote to Fall, stating that he was willing to take out all the oil in the reserve on a royalty basis and specifying features substantially the same as those suggested to him by Robison. He also proposed to quiet all outstanding claims and so enable the Government to make one lease covering the whole reserve. His letter argued against granting leases by auction, asserted that the reserve was being drained, and insisted that it was better to have oil stored where needed than to keep the reserve underground. On receipt of the letter, Fall conferred with Sinclair and directed Arthur W. Ambrose, chief petroleum technologist of the Department, to give him an estimate of the quantity of oil in the reserve and "some idea as to the possibilities of drainage." February 18, Ambrose reported that he estimated 360,270,000 barrels in the Salt Creek field and 135,050,000 barrels in the reserve. His report disclosed no immediate danger of drainage but only a possibility of loss "during the next six or seven years." About that date Fall called Ambrose into his office where Sinclair and Zevely were and, outlining certain provisions he wanted, directed that a draft of lease be prepared. The work of preparation required two or three weeks, and most of it was done in Zevely's office in Washington. Questions concerning its provisions arising from time to time were referred to Fall and Sinclair; they settled all the terms of the

lease. The draft was not submitted to any lawyer in the Interior Department.

The Pioneer Oil and Refining Company and the Societe Belgo-Americaine des Petroles du Wyoming had asserted placer mining claims to lands in the reserve. In 1917, the Department fully investigated and found these claims were without merit. In 1920, Secretary Payne held them invalid and denied application for a lease. In March, 1921, Assistant Secretary Finney dismissed claimants' petition for rehearing. Later, they filed a petition to invoke the supervisory power of the Secretary. Answering an inquiry from Fall, Finney told him that the claims "had no validity and no standing." The last petition had not been heard when Fall and Sinclair met at the ranch. The report that Fall called for was ready before he returned to Washington; it stated that there were no claims deserving serious consideration. Obviously, Sinclair's proposal to quiet outstanding claims was the result of an understanding with Fall.

February 28, 1922, Sinclair caused the Mammoth Company to be organized. It promptly obtained from the Pioneer and Belgo companies quitclaim deeds of all the reserve lands, and agreed with them that, in the event of obtaining a lease covering the lands, it would pay them $200,000 within 18 months and $800,000 more out of one-third of the value of the gross production less royalties. March 11, Sinclair wrote Fall submitting the Mammoth Company's formal application for a lease. He said that, if the lease were granted, he would become owner of all the capital stock of the company and would personally guarantee performance of the contract. He submitted a form of lease—presumably that already prepared in cooperation with Fall—and inclosed the company's quitclaim deed to the United States of all that was conveyed to it by the Pioneer and Belgo companies. The record shows that, after he knew that the Mammoth had obtained these deeds, Fall told some who sought to lease the reserve that he would require the lessee to satisfy or clear up outstanding claims. In March, after much time had been spent in preparing the lease, Fall told a representative of a company seeking a lease that he was not ready at that time to consider leasing the reserve and that, if he did so decide, he would notify the applicant. To one acting for another company, who called about April 10 to submit an offer for a lease, Fall in-

dicated that he would entertain a bid and said that he would be glad to see representatives of the company at Three Rivers. The lease had been signed by Fall April 7.

March 16, 1922, John C. Shaffer called on Fall concerning an earlier application for a lease covering a specified tract of 600 acres in the reserve. Fall said he was then negotiating with Sinclair for a lease covering the reserve. Shaffer insisted upon having some of it, and Fall said he had told Sinclair to set aside 200 acres for Shaffer. And when Shaffer demanded more, Fall advised him to see Sinclair, adding, "I think you will find him a very reasonable man, and you probably will make satisfactory arrangements with him." Shaffer went to New York and saw Sinclair. The latter said that Fall had told him to reserve 200 acres for Shaffer. Shaffer demanded 600 acres, protracted negotiations between them followed, and it does not appear that any agreement was ever reached. Fall's arrangement with Sinclair for a sublease to Shaffer was extraordinary and indicates that he had favored the Mammoth Company and that Sinclair on that account had assumed obligations not expressed in the lease.

About March 30 a rough draft of the lease was given Robison. April 7, Fall signed as Secretary of the Interior and "for the Secretary of the Navy." It was thought desirable, whether necessary or not, that Denby should sign; and, about April 12, he did so. Then Fall, about to leave for New Mexico, told Finney that the lease had been executed, and locked it and copies in his desk. He said that "he didn't want it to get out" until after the consummation of the contract (that set aside in the *Pan American Case*) for the construction of storage tanks, etc., at Pearl Harbor. He wrote Denby inclosing a copy and stating that delivery of the lease had been made to the lessee; that he had instructed his office force to give out nothing; that he was particularly anxious that no details should be disclosed pending the completion of the other contract. And, in order to support his refusal to furnish a senator information concerning these contracts, Fall insisted that they should not be given out because military plans were involved. After Fall left, inquiries were made at the Department, but all information was withheld. When demand became more insistent, Fall wired his office to notify Sinclair to furnish a surety company bond "in view of congres-

sional agitation" instead of Sinclair's personal bond theretofore accepted. About April 21, information concerning the lease was given in response to a Senate resolution. There was never any legitimate reason for secrecy.

The Mammoth Company insists that the lease was made to protect the reserve from loss by drainage. The trial court did not pass upon the matter. The Circuit Court of Appeals found there was a remote but not immediate danger. It said (p. 719): "The drainage danger was unquestionably not imminent enough to force immediate action in the leasing of the entire property." That fact is satisfactorily established. A discussion of the evidence is not necessary. The circumstances, terms of the arrangement and testimony of witnesses show that the lease and agreement were not made to prevent drainage. While the negotiations were pending, Fall and Sinclair indicated that they thought such danger existed, but the evidence warrants a finding that their expressions were made in bad faith to make it appear that there was a reason for the exhaustion of the reserve and the proposed disposition of its products.

In January, 1922, Fall was informed that counsel for certain oil companies had held that the use of royalty oil to pay for fuel depots was not authorized by law. He expressed fear that, because of the "question as to the legality of bartering of royalty oil for storage, people would not bid for this contract and lease in California." But he refused to submit the question to the Attorney General, and, as a reason for not taking such legal advice, said that "the chances were at least even, or at least there was some chance" that an adverse opinion would be given "and if the Attorney General signed such an opinion . . . he [Fall] would be estopped from doing anything." And, on April 12, the day that Denby signed the lease, Fall asked him to procure the adoption of an amendment to the pending naval appropriation bill, providing that storage for fuel oil from the reserves might be obtained by exchange of oil or by use of cash received for royalty oil sold. Fall sent Denby a draft of the amendment and undoubtedly thought its adoption would authorize the exchange of oil for the storage facilities contemplated by the lease. Under the circumstances, his failure to submit the lease to the Attorney General or to any lawyer in his own Department indicates that he knew that the transaction was liable

to be condemned as illegal, and that, without regard to the law, he intended to put it through.

Shortly after the making of the lease, Fall received from a hidden source a large amount of Liberty Bonds, and others were used for his benefit. The substance of the disclosed circumstances follows. A. E. Humphreys controlled two oil producing companies. H. M. Blackmer was chairman of the board of the Midwest Refining Company, a subsidiary of the Standard Oil Company of Indiana. The latter and the Sinclair Consolidated Oil Corporation owned share and share alike the Pipe Line Company and Purchasing Company. November 15, Humphreys, his counsel Charles S. Thomas, Blackmer, Sinclair, and James E. O'Neil, president of the Prairie Oil and Gas Company, met in New York. It was there understood that Humphreys' companies would sell to Blackmer at $1.50 a barrel half their production up to 33,333,333 barrels, and also that they would sell at prices current in the field to the Prairie Company and the Purchasing Company half the production after delivery of the oil so sold to Blackmer. The same persons and R. W. Stewart, president of the Standard Oil Company of Indiana, met the next day. It was then understood that, instead of Blackmer, the Continental Trading Company Ltd. would be the purchaser in the first transaction and that performance on its part would be guaranteed by the Prairie Company and the Purchasing Company. The papers were so drawn. On the same day, Henry Smith Osler, a barrister of Toronto, caused application to be made to the Secretary of State for Canada for the incorporation of the Continental Company. The next day, he attended a meeting of the same persons and executed the contract on behalf of that company. Its performance was guaranteed as arranged, O'Neil acting for the Prairie Company and Sinclair and Stewart for the Purchasing Company. At the same time the Continental Company and these guarantors made a contract by which the latter bought all the oil so purchased by the Continental Company and assumed all its obligations. On the price basis specified, the gain of the Continental would be at least 25 cents per barrel and under some circumstances might be more. The Continental was to receive payments for the oil on the tenth of each month, but was not bound to pay the producers before the fifteenth. So it was assured profit of at least 25 cents per barrel without financing or effort of any kind. As permitted by

Canada law, it issued share warrants to bearer with dividend coupons attached; except for qualifying shares, it put out no stock, did no other business, and kept no accounts. All its financial transactions were handled by the New York agency of the Dominion Bank of Canada. There was found no record disclosing who were financially interested in the company or entitled to dividends paid by it. Pursuant to Osler's instructions, the New York agency on April 13 and April 17, 1922, bought Liberty Bonds of $300,000 par value; and, on May 8 following, Osler as president of the Continental Company gave the agency a receipt for Liberty Bonds of that amount. There were other similar transactions; and, between February 1922 and June 1923, like purchases and deliveries amounted to more than $3,000,000. In May, 1923, the Continental Company assigned its contract with the Humphreys' companies to its guarantors for $400,000. Shortly afterwards, it was dissolved, and all its records were destroyed.

May 29, 1922, at Pueblo, Colorado, Fall's son-in-law, M. T. Everhart, had $230,500 in Liberty Bonds. Of that amount, $200,000 were, by the numbers thereon, conclusively shown to have been included in the lots purchased by the New York agency, April 13 and April 17, and receipted for by Osler May 8. Everhart gave the First National Bank of Pueblo bonds for $90,000 to be kept for Fall. He sold the balance to the M. D. Thatcher Estates Company at par and accrued interest. Fall and Everhart owned all the stock of the Tres Ritos Cattle and Land Company. The Thatcher Company had loaned the cattle company $10,000, Fall $15,000, and Everhart $83,000, and for security held all the stock of that company. Out of the proceeds of the bonds, Everhart paid these debts. The balance was distributed to the company, Fall and Everhart. Out of the $90,000 in bonds given to the bank for Fall, $20,000 were deposited to the credit of the cattle company, and the rest was sent to Fall. In October and November, 1922, he sold $20,000 in Texas; and, in May, 1923, $50,000 in New Mexico. The Government called Everhart as a witness, but, invoking the rule against compulsory self-incrimination, he declined to give any information as to where he got the bonds.

Humphreys and his counsel testified but were unable to disclose who were financially interested in the Continental Company. Blackmer and O'Neil went to France; and, on the application of

the Government, letters rogatory issued, but they refused to testify. Subpoena was issued for Stewart, but the marshal returned that he could not be found. Commissioners were appointed to take the deposition of Osler in Canada. He was sworn, but declined to disclose who caused him to organize the Continental Company or to give information as to its owners or the distribution of its assets. As ground for the refusal, he asserted that the information called for was privileged because communicated to or obtained by him in the course of his employment as a professional legal advisor, and that the company and its officers were his confidential agents for the better performance of his duties to his client. Application was made to the Supreme Court of Ontario to compel him to testify. That court held he must answer, 56 O. L. R. 307; and its judgment was affirmed on appeal. 56 O. L. R. 635. The District Court, on defendants' objections, refused to delay the trial pending final decision in the Canada courts and thereafter refused to reopen the case in order to get Osler's testimony.

The creation of the Continental Company, the purchase and resale contracts enabling it to make more than $8,000,000 without capital, risk or effort, the assignment of the contract to the resale purchasers for a small fraction of its probable value, and the purpose to conceal the disposition of its assets make it plain that the company was created for some illegitimate purpose. And the clandestine and unexplained acquisition of these bonds by Fall confirms the belief, generated by other circumstances in the case, that he was a faithless public officer. There is nothing in the record that tends to mitigate the sinister significance attaching to that enrichment.

Fall ceased to be Secretary, March 4, 1923. Shortly afterwards, Sinclair gave him $25,000 under these circumstances. Sinclair, about to go to Russia on business, had Zevely arrange with Fall to meet him there. Fall was given $10,000 for expenses; and, May 26, 1923, Sinclair directed his secretary, Wahlberg, to give Zevely bonds for $25,000 if the latter asked for them. A few days later, Zevely obtained the bonds and, at Fall's request, had them sent to the First National Bank of El Paso. Zevely wrote the bank that the package belonged to Fall. By direction of Fall, the bank sold the bonds and gave him credit for the proceeds, $25,671.36. Zevely testified concerning the transaction before the Senate Committee on Public Lands, and that testimony was introduced at the trial by

the defendants. Its substance was that Zevely went to New Mexico to see Fall because he did not want to write about the matter; that, in addition to the expense money, Fall wanted $25,000 to buy one or two small ranches there; that Zevely so reported to Sinclair, who said: "If he does, you will have to let him have it"; that later Zevely had Wahlberg, who did not know the bonds were for Fall, send them to the designated bank; that the bonds were not given as a fee but as a loan from Sinclair; that, after Fall's return from Russia, he gave Zevely a note for $25,000 which the latter still held. Fall allowed the proceeds of the bonds to remain in the bank for a long time, and it does not appear that he ever bought the ranches. It is obvious that this was not a straightforward transaction. Coming so soon after the supplemental agreement made to perfect and carry out the scheme, it strengthens and confirms the inference that Fall had been willing to conspire to defraud the United States; and, taken in connection with other circumstances disclosed, it is persuasive evidence of such a conspiracy between him and Sinclair.

Familiar rules govern the consideration of the evidence. As said by Lord Mansfield in *Blatch* v. *Archer* (Cowper 63, 65): "It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted." The record shows that the Government, notwithstanding the diligence reasonably to be expected, was unable to obtain the testimony of Blackmer, O'Neil, Stewart, Everhart, or Osler in respect of the transaction by which which the Liberty Bonds recently acquired by the Continental Company were given to and used for Fall. And the record contains nothing to indicate that the petitioners controlled any of them, or did anything to prevent the Government from obtaining their testimony, or that they or the evidence they might have given was within petitioners' power. But the failure of Sinclair to testify stands on a different basis. Having introduced evidence which, uncontradicted and unexplained, was sufficient to sustain its charge, the United States was not required to call the principal representative of the company. His silence makes strongly against the company. It is as if he personally held the lease, were defendant, and failed to testify. The guiding considerations by which the proper significance of such silence is to be ascertained were well stated by Chief Justice Shaw in the celebrated case of

Commonwealth v. *Webster*, 5 Cush. 295, 316: "Where, for instance, probable proof is brought of a state of facts tending to criminate the accused, the absence of evidence tending to a contrary conclusion is to be considered,—though not alone entitled to much weight; because the burden of proof lies on the accuser to make out the whole case by substantive evidence. But when pretty stringent proof of circumstances is produced, tending to support the charge, and it is apparent that the accused is so situated that he could offer evidence of all the facts and circumstances as they existed, and show, if such was the truth, that the suspicious circumstances can be accounted for consistently with his innocence, and he fails to offer such proof, the natural conclusion is, that the proof, if produced, instead of rebutting, would tend to sustain the charge. But this is to be cautiously applied, and only in cases where it is manifest that proofs are in the power of the accused, not accessible to the prosecution." While Sinclair's failure to testify cannot properly be held to supply any fact not reasonably supported by the substantive evidence in the case (*Northern Railway Company* v. *Page*, 274 U. S. 65, 74), it justly may be inferred that he was not in position to combat or explain away any fact or circumstance so supported by evidence and material to the Government's case. *Runkle* v. *Burnham*, 153 U. S. 216, 225; *Kirby* v. *Tallmadge*, 160 U. S. 379, 383; *Bilokumsky* v. *Tod*, 263 U. S. 149, 154; *Vajtauer* v. *Commissioner of Immigration*, 273 U. S. 103, 111; *Clifton* v. *United States*, 4 How. 242, 247; *Missouri, K. & T. Ry. Co.* v. *Elliott*, 102 Fed. 96, 102. As to facts appearing to have been within the knowledge or power of Sinclair, we find that the evidence establishes all that it fairly and reasonably tends to prove.

The complaint did not allege bribery; and, in the view we take of the case, there is no occasion to consider and we do not determine whether Fall was bribed in respect of the lease or agreement. It was not necessary for the Government to show that it suffered or was liable to suffer loss or disadvantage as a result of the lease or that Fall gained by or was financially concerned in the transaction. *Pan American Case*, *supra*, p. —. It requires no discussion to make it plain that the facts and circumstances above referred to require a finding that pending the making of the lease and agreement Fall and Sinclair, contrary to the Government's policy for the con-

servation of oil reserves for the Navy and in disregard of law, conspired to procure for the Mammoth Company all the products of the reserve on the basis of exchange of royalty oil for construction work, fuel oil, etc.; that Fall so favored Sinclair and the making of the lease and agreement that it was not possible for him loyally or faithfully to serve the interests of the United States or impartially to consider the applications of others for leases in the reserve, and that the lease and agreement were made fraudulently by means of collusion and conspiracy between them.

The lease gave the Mammoth Company the right to construct tanks and other operating facilities on the reserve. In January, 1923, the petitioner, Sinclair Crude Oil Purchasing Company, bought from that company the tanks already constructed and others being built thereon. It used them to store Salt Creek royalty oil that it bought from the Government. It claims that it relied on the validity of the lease and became the owner of the tanks as licensee and grantee of the lessee and entitled to maintain them in all respects as the lessee was entitled to do under the lease. It contends that the Circuit Court of Appeals erred in directing it to be restrained from further trespassing upon the reserve, and that in any event it should be given opportunity to remove its property. But the Purchasing Company is presumed to have known that no law authorized the making of any such lease. The existence of that arrangement for the exhaustion of the reserve was calculated to excite the apprehensions of one considering such a purchase and put him on his guard rather than to give assurance of safety. The use of such tanks to take oil from the reserve was a part of the illegal scheme. Moreover, the Purchasing Company was owned half and half by the Sinclair Consolidated Oil Corporation and the Standard Oil Company of Indiana. Sinclair was chairman of the board of the former, and Stewart held like position in the latter. Shortly before the Purchasing Company bought the tanks, these chairmen acted for and controlled it in respect of most important transactions. That and other disclosed circumstances are sufficient to impute to it Sinclair's knowledge of the conspiracy to defraud by which the lease was obtained. It is clear that, in respect of the use and removal of these tanks, the Purchasing Company is in no better position than the Mammoth Company would have occupied, if it owned them.

The Sinclair Pipe Line Company, as lessee's nominee to build the pipe line provided for in the lease, expended a large amount in constructing on the reserve a pumping station, pipe line and other equipment necessary for the transportation of the oil therefrom. It asserts that it relied on the validity of the lease, had no knowledge of any fraud in its procurement and made these expenditures in good faith. It contends that it should have opportunity to procure from governmental authorities a right to use the reserve lands for the operation of the pipe line and equipment thereon; and, failing to get a right of way or easement for that purpose, it should be allowed to remove its property. That company was also owned half and half by the Consolidated Company and the Standard Company. It was a mere nominee to do some of the work specified in the lease to be performed by the lessee. It is chargeable with notice that the use of reserve oil to procure the construction of the pipe line was a part of the plan for the unauthorized exhaustion of the reserve; that such use furthered the violation of law and was contrary to the established conservation policy. The Pipe Line Company stands on no better ground than the lessee would have occupied if it had made the improvements in question.

The tanks, pipe line and other improvements put upon the reserve for the purpose of taking away its products were not authorized by Congress. The lease and supplemental agreement were fraudulently made to circumvent the law and to defeat public policy. No equity arises in favor of the lessee or the other petitioners to prevent or condition the granting of the relief directed by the Circuit Court of Appeals. Petitioners are bound to restore title and possession of the reserve to the United States, and must abide the judgment of Congress as to the use or removal of the improvements or other relief claimed by them. *Pan American Case, supra*, p. —.

Decree affirmed.

Mr. Justice Van Devanter and Mr. Justice Stone took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.